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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 AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1435

RIN 0560–AH86

Sugar Program; Feedstock Flexibility Program for Bioenergy Producers

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This rule amends regulations that specify the methods that the Commodity Credit Corporation (CCC) can use to dispose of its sugar inventory and establishes the new Feedstock Flexibility Program (FFP). Through FFP, the Secretary is required to purchase sugar and sell it to produce bioenergy as a means to avoid forfeitures of sugar loan collateral under the Sugar Program. The FFP regulations are required by the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill) amendments to the Food Security and Rural Investment Act of 2002 (the 2002 Farm Bill), and as further amended by the American Taxpayer Relief Act of 2012.

DATES: *Effective date:* July 29, 2013.

FOR FURTHER INFORMATION CONTACT: Barbara Fecso; telephone (202) 720–4146. Persons with disabilities who require alternative means for communications (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

Under the Sugar Program, domestic sugar beet or sugarcane processors may borrow from CCC, pledging their sugar production as collateral for any such loan, and then satisfy their loans either by repaying the loan on or before loan maturity or by transferring the title for the collateral to CCC immediately following loan maturity, also known as ''forfeiture'' of collateral (as specified in 7 CFR 1435.105). The Farm Service Agency (FSA) administers the Sugar Program for CCC. The regulations for sugar loans in 7 CFR 1435 parts A and B are not changing. CCC is required to operate the Sugar Program, to the maximum extent practicable at no cost to the Federal government, by avoiding forfeitures to CCC. If domestic sugar market conditions are such that market rates are less than forfeiture level, current law requires CCC to use FFP to purchase sugar and sell such sugar to bioenergy producers to avoid forfeitures.

This final rule amends the Sugar Program regulations to implement FFP and to establish appropriate methods for the disposition of sugar inventory that CCC has acquired other than through FFP. CCC may acquire sugar through forfeiture of CCC sugar loans or through sugar purchases to reduce the cost of the Sugar Program under the cost reduction options provided by section 1009 of the Food Security Act of 1985 (7 U.S.C. 1308a, Pub. L. 99–198). Implementation of FFP is required by the amendment by section 9001 of the 2008 Farm Bill (Pub. L. 110–246) to section 9010 of the 2002 Farm Bill (7 U.S.C. 8110, Pub. L. 107–171), and as further amended by section 701(f)(9) of the American Taxpayer Relief Act of 2012 (Pub. L. 112–240). Regulations implementing FFP are in 7 CFR part 1435, ''Sugar Program,'' in new subpart G, ''Feedstock Flexibility Program.'' Regulations implementing sugar disposition methods are in 7 CFR part 1435 in new subpart E, ''Disposition of CCC Inventory.''

FFP addresses sugar surpluses sooner than the current Sugar Program by permanently removing such sugar from the market for human consumption. The current Sugar Program removes surplus sugar from the market near the end of the crop year as sugarcane and sugar beet processors forfeit sugar loan collateral to CCC. The acquired inventory can be stored for resale to the market upon improvement in market prices. Under FFP, CCC may remove surplus sugar from the market earlier in the year, as FFP requires CCC to avoid sugar loan forfeitures. FFP also requires the surplus sugar to be used to produce bioenergy, which precludes CCC's resale of inventory into the market for human consumption.

Current law provides USDA authority for these programs through the 2013 sugar crop year (which runs from October 1, 2013 to September 30, 2014). Recent indications in the sugar market suggest that forfeitures may occur in crop year 2012. However, if sugar prices remain below the forfeiture level, CCC may be required to use FFP to purchase sugar before August 1, 2013, the first date that 2012-crop loans can be forfeited to CCC. The last year in which sugar loan forfeitures occurred was 2005. The methods specified in this rule for both purchases under FFP and disposition of CCC sugar inventory are not expected to be used in most years.

CCC published a proposed rule in the **Federal Register** on October 19, 2011 (76 FR 64839–64844), with respect to the 2008 amendments that would establish FFP and restrict CCC sugar inventory disposition outlets to non-food use under non-emergency shortage conditions. CCC received six comments on the proposed rule. The comments and responses are discussed later in this document. As explained below, no major changes are being made in response to comments, because CCC has determined, based on the evenly balanced opposing and supporting comments for specific changes, that the proposed rule equitably balances the conflicting interests of sugar producers and sugar users. CCC has made other changes from the proposed rule in this final rule clarifying the types of sugar eligible for FFP and eliminating the eligibility requirement that the eligible bioenergy producers' facility be located in the United States.

Sugar Program Background

Administration of the current Sugar Program requires CCC to balance domestic supply with demand so that U.S. sugar prices are no less than levels specified in the 2008 Farm Bill and to maintain an adequate domestic sugar supply. This rule does not change CCC's management of sugar loans, sugar marketing allotments, or import tariff-rate quotas (TRQs). Specifically, this rule introduces purchases and sales of sugar for bioenergy production under FFP as a proactive means for CCC to avoid forfeitures. FFP is expected to be unnecessary in most years, as USDA's long term projections indicate a generally strong domestic sugar market in the future.

Sugar Inventory Disposition

This rule adds a new subpart E, ''General Disposition of CCC Inventory,'' to 7 CFR part 1435 to implement the 2008 Farm Bill requirements and the 2012 amendments to the 2002 Farm Bill. Subpart E applies to sugar in inventory that CCC owns, such as sugar obtained from forfeited loan collateral. CCC does not expect to regularly use these methods, as it is legislatively required to operate FFP to avoid forfeitures.

As specified in Subpart E, CCC will dispose of sugar held in CCC inventory in ways that do not increase the domestic supply of sugar for human consumption, except in conditions of emergency sugar shortages. CCC may, under non-emergency conditions, dispose of sugar held in inventory through sales under FFP (new subpart G), through the Processor Sugar Payment-in-Kind (PIK) Program (7 CFR part 1435 subpart F, which is not changing), through buybacks of Certificates of Quota Eligibility (CQEs), which are issued under 15 CFR part 2011 to TRQ holding countries and authorize sugar to enter the United States under the TRQs, or through other applicable CCC disposition authority in such a way as not to increase the domestic supply of sugar for human consumption. Under the PIK disposal option, CCC would swap sugar inventory for retired sugarcane or sugar beet acreage. CCC disposed of 473,000 tons of sugar inventory under a similar PIK Program in fiscal year (FY) 2001 and FY 2002. Under the CQE option, CCC would allow traders to swap CQEs for sugar inventory. CCC disposed of 116,000 tons of sugar inventory under CQE swaps in FY 2002 and FY 2003. Both methods reduce sugar in the domestic supply for human consumption. The announcements of the use of such methods to dispose of sugar held in inventory will be placed on the FSA Commodity Operations Web site at *http://www.fsa.usda.gov/FSA/webapp?area=home&subject=coop&topic=landing.*

If there is an emergency shortage of sugar for human consumption in the domestic market, the Secretary may use applicable CCC authority to dispose of sugar inventory, including sales for human consumption.

As amended by the 2008 Farm Bill, section 9010 of the 2002 Farm Bill specifies that an emergency shortage of sugar for human consumption in the United States market is one ''caused by a war, flood, hurricane, other natural disaster, or other similar event.'' CCC did not propose to define ''emergency shortage'' in the proposed rule, and noted that the ''similar event'' clause provides flexibility to respond to shortages caused by manmade events. In the background section of the proposed rule, CCC requested comments on whether CCC should define ''emergency shortage'' in the rule, either by listing the specific types of events that cause a shortage or by specifying a formula based on price or stock levels that constitute a shortage. As discussed in more detail later in this document, the comments received were not in agreement on whether there should be a specific definition or what that definition should be. Therefore, CCC has retained the language of section 9010 in the final rule that specifies the causes of an emergency shortage, but has not adopted a specific formula for what constitutes a shortage. CCC therefore retains flexibility to make a determination whether particular circumstances constitute an ''other similar event'' that has caused an emergency shortage, and whether a particular price or stock level constitutes a shortage. There were no comments received on any other sugar disposition provisions specified in the proposed rule. Consequently, CCC did not make any substantive changes to those provisions.

Subpart G—Feedstock Flexibility Program

New subpart G specifies how CCC will operate FFP. Through FFP, CCC will buy sugar as needed to avoid forfeitures of sugar loan collateral and sell that sugar to bioenergy producers. Bioenergy, as defined in section 9001 of the 2008 Farm Bill, amending section 9010 of the 2002 Farm Bill, means fuel grade ethanol and other biofuel.

As amended by the 2008 Farm Bill, section 9010 of the 2002 Farm Bill requires the Secretary to estimate, by September 1 of each year, the likelihood of sugar forfeitures for the following crop year, and announce the quantity of sugar to be made available for purchase and sale for bioenergy production. In addition, CCC will make quarterly announcements of revised estimates of such quantity. CCC's purchase and sale plans will be affected by the large degree of uncertainty in USDA's sugar market projections made early in the year. As specified in this rule, CCC will update the estimated quantity of sugar to be made available for purchase and sale under FFP not later than January 1, April 1, and July 1 of each year. Any FFP purchases expected in calendar year 2013 for the 2012 crop will be announced in the quarterly updates in FY 2013.

The 2008 Farm Bill amendments specify that the only commodities eligible to be made available for purchase under FFP are ''raw or refined, or in-process sugar'' that would otherwise have been marketed for human consumption in the United States or could otherwise have been used for the extraction of sugar marketed for human consumption.

Applicable law requires that the entity selling sugar to CCC be located in the United States. The 2008 Farm Bill amendments do not require that the sugar buyer's bioenergy facilities be located in the United States. CCC nevertheless initially proposed to limit eligible buyers to those bioenergy producers who would use the purchased sugar to produce bioenergy in their facilities in the United States. This restriction was initially proposed to benefit the American taxpayer, who is paying for FFP, and CCC indeed received one (favorable) comment related to such proposed restriction. However, section 9010 of the 2002 Farm Bill, as amended, expressly provides that the sale of sugar to bioenergy producers must be conducted in a manner that ensures the Sugar Program is operated at no cost to the Federal Government by avoiding forfeitures to CCC. To restrict eligible buyers to those bioenergy producers whose production facilities are located in the United States may restrict the pool of sugar buyers, potentially increasing the cost to the Federal Government and the likelihood of forfeitures to CCC. Such a result would be contrary to the interests of the American taxpayer. Consequently, the final rule does not adopt this restriction. Ultimately, CCC estimates that few if any prospective buyers would seek to use the sugar to produce bioenergy at facilities outside the United States, as it is not expected to be cost-effective to transport over longer distances sugar that must be used for bioenergy production.

Any biofuel producer that wishes to participate in the Environmental Protection Agency's (EPA's) Renewable Fuel Standard (RFS) program must comply with EPA regulations, in 40 CFR part 80; however, participation in RFS is not a requirement for participation in FFP. Assuming all of the applicable RFS requirements are met, EPA has confirmed that ethanol produced from U.S. sugarcane would qualify for an advanced fuel RIN, and that ethanol produced from U.S. sugar produced from U.S. sugar beets would qualify for a conventional RIN, subject to certain grandfathering provisions.

CCC will invite sugar producers to sell sugar for FFP and shortly thereafter

invite bioenergy producers to bid on purchasing sugar for bioenergy production. The terms and conditions of the sugar purchase and sale contracts will be outlined in the dual invitations. The invitations will be placed on the FSA Commodity Operations Web site at *http://www.fsa.usda.gov/FSA/webapp?area=home&subject=coop&topic=landing.* Alternatively, CCC may negotiate contracts directly with sellers or buyers, if CCC determines that such negotiation, compared to other means, either will reduce the likelihood of forfeited sugar or reduce costs of removing sugar from the market. CCC may employ several contracting strategies to discover the most cost-effective strategy to manage FFP.

The 2008 Farm Bill amendments require that purchasers of sugar under FFP take possession within 30 days after the date of purchase from CCC. CCC will therefore attempt, when possible, to identify a bioenergy producer (sugar buyer) before CCC purchases sugar, and require the buyer to take possession of the sugar within 30 days of purchase. Since the law prohibits CCC, to the maximum extent possible, from paying storage fees for FFP sugar, CCC will structure the FFP contracts so that CCC does not pay any storage fees. Specific terms and conditions will be outlined in the invitations to sell and buy sugar for the FFP. For instance, potential sugar buyers will have the opportunity to discuss and arrange storage and load out terms with the sugar seller prior to placing bids. As specified in subpart E, sugar acquired by CCC through methods other than FFP, such as sugar loan forfeitures, may also be sold for bioenergy production through FFP.

Since the value of sugar required to be sold for bioenergy production will likely be less than the market price for sugar used for human consumption, there is an incentive for FFP sugar sold to bioenergy producers to leak into the domestic human consumption market. Therefore, CCC will require proof from each FFP bioenergy producer that the sugar is used in the bioenergy facility for the production of bioenergy. Bioenergy producers, at minimum, will be required to permit CCC access to the bioenergy facility to verify compliance; however, CCC may also require a performance bond or a similar instrument to assure that the purchased sugar is used to produce bioenergy. Specific terms and conditions of any such bond or instrument will be specified in the invitations to sell and buy sugar for the FFP.

As noted above, CCC is not specifying the precise contracting method or language in the rule in order to maintain maximum flexibility in achieving program goals in the most cost effective way.

Discussion of Comments

The comments CCC received in response to the proposed rule were from a representative of all sugar producers, a representative of sugar beet processors, a representative of companies that use sugar and sweeteners to manufacture foods and beverages, and three members of the general public. Half of the comments offered specific suggestions to amend the provisions in the proposed rule; the rest generally opposed or supported the Sugar Program. There was not a consensus on any of the suggested changes. There was general support for many of the provisions in the proposed rule, including how eligible forms of sugar for FFP are defined and CCC's proposed flexible approach to how purchases will be made if needed. Two commenters recommended terminating the Sugar Program, which CCC does not have authority to do; another comment generally supported FFP. The other comments offered specific suggestions to amend the rule or provided specific suggestions on how the rule should be implemented. The following provides a summary of the issues in the comments and CCC's responses, including changes being made to the final rule in response to the comments.

Disposition of Sugar Inventory

Comment: CCC should leave ''emergency shortage'' undefined. Leaving the term undefined would give CCC the flexibility needed to operate the program successfully and that linking the term to a price formula is not authorized by the 2008 Farm Bill amendments. Defining the term in this inventory disposal regulation might automatically, and inappropriately, lead to the same definition being applied to the administration of the TRQs as required by 7 U.S.C. 1359kk.

Response: The 2008 Farm Bill amendments specify some of the potential causes of an emergency shortage, but do not define an emergency shortage in terms of either price or a supply disruption. Based on a lack of consensus of commenters, this rule does not define the term. (See below, other commenters suggested that this term be defined.) CCC also wishes to maintain flexibility to determine whether particular events and their consequences give rise to an emergency shortage of sugar for human consumption in the United States market.

Comment: CCC should define the term ''emergency shortage'' because market participants deserve to have a clear picture of CCC's thinking on this issue. Emergency shortage should be defined the same way it is used when CCC decides to increase the sugar TRQ. The definition should define an emergency shortage in terms of the effects, not the cause (for example, supply disruptions and price spikes). A specific percentage price increase above the loan forfeiture would be a useful way to measure what price constitutes an emergency shortage. Also, CCC should consider declarations of force majeure, plant closures, slowdowns, and temporary shutdowns in production lines as emergencies. CCC should consider establishing a benchmark of ''adequate supplies at reasonable prices,'' as already specified in the Harmonized Tariff Schedule of the United States, to determine if a shortage exists.

Response: The 2008 Farm Bill amendments specify some of the causes that can give rise to an emergency shortage, but do not define what constitutes a shortage in terms of its effects. Other commenters suggested that this term be left undefined. Based on a lack of consensus of commenters, this rule does not define the term. CCC will use discretion to determine when an emergency shortage exists, and not define a specific formula or price level in the rule. The 2008 Farm Bill amendments require a triggering event before CCC can declare an ''emergency shortage.'' From past experience with sugar shortages caused by disasters, CCC recognizes that it must be flexible to mitigate the unforeseen consequences of disastrous events. However, CCC would consider food manufacturing plant closures and similar events as events that could give rise to an emergency shortage.

Comment: CCC should not limit eligible causes of emergency shortages to only the natural causes specifically mentioned in the 2008 Farm Bill amendments, since the amendments also include references to ''other natural disaster, or other similar event.'' However, the 2008 Farm Bill amendments are clear that the triggering event must be ''similar''—it does not give CCC complete discretion to consider any event or market condition as the cause of an emergency shortage. The courts have repeatedly upheld the principle of *ejusdem generis*—that where general words follow specific ones, the general words must be construed to include only objects similar to those specified. The final rule should use the 2008 Farm Bill

amendments language, but in implementation, it must be clear that mere high prices or low ending stocks do not constitute a similar event to war or hurricane. An eligible manmade event causing a shortage of sugar must be similar to a war, that is, an extreme event that results in massive loss of life, property destruction, or a severe disruption of international trade—not merely low ending stocks or high prices. Similarly, an ''other natural disaster'' cause of sugar shortage must be on the order of a flood or hurricane that causes death and destruction, and not a more localized event such as a tornado or hail storm.

Response: CCC has decided not to define the ''emergency shortage'' or its causes in the regulation as there was no consensus among commenters. CCC also wishes to maintain flexibility to determine whether particular events and their consequences give rise to an emergency shortage of sugar for human consumption in the United States market. The final rule uses the specific language from the 2008 Farm Bill amendments to specify what constitutes a cause of an emergency shortage.

Feedstock Flexibility Program

In the proposed rule, CCC requested comment on how CCC should calculate a sugar market surplus, particularly for the required September 1 estimate, when uncertainties are greatest. CCC also requested comments on appropriate methods to estimate the likelihood of forfeitures and to determine the quantity of sugar to be purchased in each quarter. In comments on the proposed rule, both sugar producers and sugar users supported estimating a surplus based on comparing stocks to stock levels that have resulted in forfeitures in the past. Sugar producers supported a generally flexible approach with no specific numerical trigger for implementing FFP, while sugar users supported an unspecified numerical threshold above the stock level that triggered forfeitures in the past. In the absence of a consensus on a specific formula for determining that forfeitures are likely, CCC retained the flexible language from the proposed rule that does not specify a formula CCC will use to determine the quantity of sugar likely to be forfeited.

In the proposed rule, CCC asked for comments on whether the regulations should specify one particular method of contracting for FFP purchases. There was a consensus that FFP should have the flexibility to determine the most appropriate approach if and when the program is needed.

Comment: The option provided in the proposed rule that CCC declare a sugar market surplus to be any stocks level appearing in USDA's World Agricultural Supply and Demand Estimates (WASDE) report that are over and above the stock level expected to result in forfeitures should be used.

Response: The WASDE stock levels will certainly be considered in analyzing whether a surplus exists. In the absence of a consensus on any specific formula as to what level represents an expectation of forfeitures, CCC has not specified a formula for what constitutes a surplus in this rule.

Comment: The level of stocks that produced forfeitures in the past may not lead to forfeitures in the future. Stocks can be, and have been, somewhat higher than the traditional ideal level of 14.5 percent, or even 15.5 percent, without leading to forfeitures. Use some projected stock level above the level that has triggered forfeitures in the past to predict surpluses.

Response: In the absence of a consensus on any specific formula as to what level represents an expectation of forfeitures, CCC has not specified what constitutes a surplus in this rule.

Comment: CCC should not use any numerical stipulation to specify the likelihood of forfeitures or for determining quantities to purchase.

Response: There is no formula specified in the rule for what constitutes a surplus. CCC will use objective criteria based on market data to justify its determination of forfeiture risk and quantities to purchase.

Comment: We support CCC's FFP sugar purchase strategy of staggering CCC purchases for biofuel as the market unfolds, rather than one single purchase.

Response: CCC is required by applicable law to estimate the quantity to be made available for purchase and sale under FFP quarterly, but will take a conservative approach early in the year, as discussed in the background section of the proposed rule.

Comment: CCC should wait until the end of the FY, when forfeitures could occur, to make any purchases for FFP.

Response: CCC will make quarterly estimates of the quantity of eligible sugar that will be made available for purchase and sale under the FFP, and announce by press release the quantity, if any, and timing of availability of FFP purchases and sales. If the projected surplus is large, CCC will need to make purchases before the end of the FY to achieve the goal of avoiding sugar loan forfeitures. CCC's purchases will be more conservative earlier in the year than later, due to the greater level of uncertainty early in the year. CCC cannot wait to make FFP purchases only when forfeitures would occur, for example, in August for FY 2013, because a principal goal of FFP is to prevent forfeitures.

Comment: We support CCC's proposal that to be eligible for FFP, sugar must be processed and located in the United States from domestically-grown sugarcane and sugar beets. Also, only biofuel facilities within the U.S. should be eligible to purchase sugar.

Response: CCC clarifies the language in 7 CFR part 1435, subpart G that to be eligible for FPP, the sugar seller must be located in the United States. As specified in this rule, eligible sugar for FFP purchase must have been processed in the United States from domestically-grown sugarcane and sugar beets. However, eligible buyers are not required to use the purchased FFP sugar in U.S. facilities. Section 9010 of the 2002 Farm Bill, as amended, expressly provides that the sale of sugar to bioenergy producers must be conducted in a manner that ensures the Sugar Program is operated at no cost to the Federal Government by avoiding forfeitures to CCC. To restrict eligible buyers to those bioenergy producers whose production facilities are located in the United States may restrict the pool of sugar buyers, potentially increasing the cost to the Federal Government and the likelihood of forfeitures to CCC. Consequently, the final rule does not adopt this restriction.

Comment: CCC needs to take a flexible approach to contracting to arrive at the most cost-efficient way to manage FFP. We support the approach in the proposed rule that FFP tender offers will include both a seller and buyer of sugar for bioenergy production to minimize FFP costs. We also support the strategy of pre-qualifying bioenergy producers willing to buy FFP sugar.

Response: CCC will generally employ competitive procedures to minimize CCC costs. Since commenters supported a flexible approach, CCC will not specify a specific purchase method in the rule.

Comment: CCC should evaluate offers in light of the forfeiture equivalent price so that sellers do not earn substantially more for selling surplus sugar to FFP than they would by forfeiting sugar to CCC. CCC must structure the contracting procedure to minimize the chance for FFP sugar sellers to receive more than they would if they forfeited sugar under loan.

Response: CCC has the authority to limit bid acceptance; no modification of the rule is necessary to address this comment. The terms of CCC's sugar purchase compared to the terms of forfeiture will determine if CCC can

expect to pay more or less under FFP than the forfeiture proceeds. In 2000, a year in which forfeitures previously occurred, CCC limited acceptable offers to less than the forfeiture proceeds, resulting in CCC paying less, and in some cases substantially less, for sugar purchased by processors than the proceeds later retained from forfeiture. However, the storage cost restriction and other FFP requirements may affect CCC's terms of purchase and CCC's determination of an acceptable offer.

Comment: CCC should include an audit clause in the contract to purchase sugar for bioenergy production to avoid fraud and misuse and to ensure the sugar does not enter the human consumption chain.

Response: As specified in this rule, each bioenergy producer that purchases sugar through FFP must provide proof to CCC that the sugar is used by such producer for the production of bioenergy.

Comment: The rule language is not consistent. The language in the example specified in § 1435.602(e), ''Eligible commodity to be purchased by CCC,'' is inconsistent with the proposed rule text in the rest of that paragraph. The example indicates that CCC would only consider a percentage of the refined sugar expected to be made from a sugar bearing product, when the other language in the same paragraph stated that all of the expected sugar to be made from the product would be considered in evaluating a bid.

Response: CCC has corrected the language so that the example is consistent with the rest of the regulatory text in that section.

Summary of Changes

In summary, as discussed above, CCC is making minor changes to the regulatory text in response to comments, including a correction and several clarifications. Sugar buyers and sugar producers had opposing comments on both sugar disposition and FFP, with buyers generally wanting CCC to take actions that would keep prices as low as possible, and sellers wanting CCC to take actions to support prices as high as possible. Given these irreconcilable opposing interests and lack of consensus on approach, CCC has made no substantive changes in response to comments, because the evenly balanced comments reflect that the proposed rule, to the extent possible within the requirements of applicable law, balances the different stakeholder interests.

CCC has made other changes from the proposed rule, not in response to comments, to clarify its evaluation of the types of sugar eligible for FFP and the location of eligible bioenergy producers. CCC has also determined that it should not limit eligible bioenergy producers to those with production facilities in the United States. Such a limitation was determined to unnecessarily limit competition for CCC sugar and may increase program costs.

Effective Date

The Administrative Procedure Act (5 U.S.C. 553) provides generally that before rules are issued by Government agencies, the rule must be published in the **Federal Register**, and the required publication of a substantive rule is to be not less than 30 days before its effective date. One of the exceptions is when the agency finds good cause for not delaying the effective date. CCC finds that there is good cause for making this rule effective less than 30 days after publication in the **Federal Register** because this rule allows CCC to prevent sugar in the U.S. market from being forfeited to CCC. The margin between the raw sugar market price and the raw sugar price level encouraging forfeiture fell in 2012 from 13.8 to 1.6 cents per pound. Therefore, to avoid possible forfeitures for crop year 2012, this final rule is effective when published in the **Federal Register**.

Executive Orders 12866 and 13563

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' 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 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) designated this rule as significant under Executive Order 12866 and, therefore, OMB reviewed this rule. A summary of the cost-benefit analysis of this rule is provided below and is available at *http://www.regulations.gov* and from the contact listed above.

Summary of Costs and Benefits

Predicting conditions months into the future is a process that involves inevitable uncertainty, with variables subject to change. Current baseline projections developed by USDA indicate that FFP authorities may be necessary only once during the 10-year baseline period. The analysis estimated a 76.9 percent chance of FFP being activated in FY 2013.

FSA assumes that 300,000 tons of CCC sugar loan collateral will be forfeited in FY 2013 if FFP is not implemented. FFP is expected to cost CCC an estimated $54.5 million more than using the least-cost surplus management option. The total cost associated with FFP is $92.3 million (300,000 tons × 2,000 lbs × 15.38 cents per lb = $92.3 million). Despite this cost, FFP has at least one benefit that is not available with other sugar supply reduction methods. Specifically, FFP will allow the generation of Renewable Identification Numbers (RINs), which will help gasoline and diesel blenders meet their Renewable Fuels Standard (RFS) mandates in 2014.

The current baseline projections indicate that there are no sugar loan forfeitures or CCC purchases of sugar for ethanol expected from FY 2014–2023, because projected raw cane and refined beet sugar prices are above the minimum prices that would result in forfeitures. More specifically, FFP is projected to be unneeded after FY 2013 because the domestic market is no longer projected to be in surplus, and the world market is projected to affect domestic prices above rate levels specified in the 2008 Farm Bill.

Expected growth in U.S. beet and cane sugar production over the next decade is projected to be very modest—less than 5 percent over the projections period. Sugar use is projected to grow about 0.7 percent a year, or 7 percent over the decade. Mexican imports are expected to average 12.8 percent of U.S. domestic sugar use. TRQ sugar imports from U.S. commitments made to member states of the World Trade Organization (WTO) and under existing trade agreements are expected to average 1.444 million short tons, raw value (STRV) annually. World raw sugar prices (Intercontinental Exchange No. 11, nearby futures) forecasts by the Organization for Economic Co-operation and Development (OECD) are used in the analysis, which average 21.58 cents per pound through the projection period, which is above the U.S. Sugar Program's support rate of 20.9 cents per pound.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601, FSA has determined that there will not be a significant economic impact on a substantial number of small entities. The entities that would be affected by this rule are sugar producers and sugar

bioenergy producers. The sugar producers are not small businesses according to the North American Industry Classification System and the U.S. Small Business Administration. There are currently no commercial bioenergy producers in the United States who use sugar solely as a feedstock, although sugar may be blended with other feedstocks currently used in the manufacture of bioenergy. The bioenergy producers in the United States who use other commodities as a feedstock and that might be expected to purchase sugar as a feedstock are not small businesses.

Environmental Review

The environmental impacts of this rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA regulations for compliance with NEPA (7 CFR part 799). The changes to the Sugar Program required by Title IX of the 2008 Farm Bill identified in this rule are considered non-discretionary. Therefore, CCC has determined that NEPA does not apply to this rule and no environmental assessment or environmental impact statement will be prepared.

Executive Order 12372

This program is not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' which requires consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published in the **Federal Register** on June 24, 1983 (48 FR 29115).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, ''Civil Justice Reform.'' This rule would not preempt State and or local laws, and regulations, or policies unless they present an irreconcilable conflict with this rule. The rule will not have retroactive effect. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, ''Federalism.'' The policies contained in this rule will not have any substantial direct effect on States, the relationship between the Federal government and the States, or the distribution of power and responsibilities among the various levels of government. Nor would this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

This rule has been reviewed for compliance with Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' The policies in this rule do not have Tribal implications that preempt Tribal law.

Unfunded Mandates

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions on State, local, or Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 for State, local, and Tribal government or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act

We anticipate that in the next 3 years fewer than 10 sugar producers will participate in FFP by selling their sugar to CCC. In addition, FSA estimates that in each of the next 3 years, fewer than 10 bioenergy producers will participate in FFP by buying sugar from CCC. Each of these will use a different form to collect different types of information. Therefore, the Paperwork Reduction Act exemption specified in 5 CFR 1320.3(c) applies because fewer than 10 sugar producers or 10 bioenergy producers are expected to need to complete the respective forms for selling or buying sugar for FFP.

E-Government Act Compliance

CCC 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.

List of Subjects in 7 CFR Part 1435

Loan programs-agriculture, Penalties, Price support programs, Reporting and recordkeeping requirements, Sugar.

For the reasons discussed above, CCC amends 7 CFR part 1435 as follows:

PART 1435—SUGAR PROGRAM

■ 1. Revise the authority citation for part 1435 to read as follows:

Authority: 7 U.S.C. 1359aa–1359jj, 7272, and 8110; 15 U.S.C. 714b and 714c.

■ 2. Add subpart E to read as follows:

Subpart E—Disposition of CCC Inventory

Sec.
1435.400 General statement.
1435.401 CCC sugar inventory disposition.

Subpart E—Disposition of CCC Inventory

§ 1435.400 General statement.

This subpart will be applicable in the event that raw, refined, or in-process sugar is owned and held in CCC inventory (accumulated under the program authorized by section 156 of the Federal Agriculture Improvement and Reform Act, as amended) as specified in subpart B of this part.

§ 1435.401 CCC sugar inventory disposition.

(a) CCC will dispose of inventory in the following manner, if CCC has not determined there is an emergency shortage of sugar for human consumption in the domestic market:

(1) By sale to bioenergy producers under the Feedstock Flexibility Program as specified in subpart G of this part,

(2) By transfer to sugarcane and sugar beet processors under the Processor Sugar Payment-In-Kind Program as specified in subpart F of this part,

(3) By the buyback of certificates of quota eligibility (CQEs), or

(4) By the use of any other authority for the disposition of CCC-owned sugar for nonfood use or otherwise in a manner that does not increase the net quantity of sugar available for human consumption in the United States.

(b) CCC may use any of its authority for the disposition of CCC-owned sugar, if CCC has determined there is an emergency shortage of sugar for human consumption in the domestic market caused by war, flood, hurricane, or other natural disaster, or similar event, as determined by CCC.

■ 3. Add subpart G to read as follows:

Subpart G—Feedstock Flexibility Program

Sec.
1435.600 General statement.
1435.601 Sugar surplus determination and public announcement.

1435.602 Eligible sugar to be purchased by CCC.
1435.603 Eligible sugar seller.
1435.604 Eligible sugar buyer.
1435.605 Competitive procedures.
1435.606 Miscellaneous.
1435.607 Appeals.

Subpart G—Feedstock Flexibility Program

§ 1435.600 General statement.

(a) The provisions of this subpart will be applied when CCC determines that buying sugar is necessary to avoid forfeitures of sugar pledged as collateral for CCC sugar loans.

(b) This subpart will be applicable to:

(1) Any sugar seller who contracts with CCC to sell sugar, and

(2) Any bioenergy producer who contracts with CCC to purchase sugar for the production of bioenergy.

§ 1435.601 Sugar surplus determination and public announcement.

(a) CCC will estimate by September 1 the quantity of sugar that will be made available for purchase and sale under FFP for the following crop year.

(b) Not later than January 1, April 1, and July 1 of the fiscal year, CCC will re-estimate the quantity of sugar that will be made available for purchase and sale under the FFP for the crop year.

(c) CCC will announce by press release the estimates in paragraphs (a) and (b) of this section, which will reflect CCC's forecast of sugar likely to be forfeited to CCC and any uncertainty surrounding that forecast.

§ 1435.602 Eligible sugar to be purchased by CCC.

(a) CCC will only purchase raw sugar, refined sugar, or in-process sugar for FFP that is eligible to be used as collateral under the CCC Sugar Loan Program, as specified in § 1435.102.

(b) Raw sugar, refined sugar, or in-process sugar purchased directly from any domestic sugar beet or sugarcane processor that made the raw sugar, refined sugar, or in-process sugar will be credited against the processor's sugar marketing allocation. (The definition for ''marketing'' in § 1435.2 applies to this subpart.)

(c) CCC will only purchase sugar located in the United States.

(d) CCC will evaluate an offer to sell sugar to CCC based upon CCC's estimate of the reduction in refined sugar supply available for human consumption due to the purchase. For example, if processing thick juice (an in-process sugar) would yield 70 percent sugar for human consumption, then CCC will only consider 70 percent of the volume of the thick juice in evaluating the per unit sales price.

(e) CCC will only purchase the sugar if such purchase would reduce the likelihood of forfeitures of CCC sugar loans, as determined by CCC.

§ 1435.603 Eligible sugar seller.

(a) To be considered an eligible sugar seller, the sugar seller must be located in the United States.

(b) [Reserved]

§ 1435.604 Eligible sugar buyer.

(a) To be considered an eligible sugar buyer, the bioenergy producer must produce bioenergy products, including fuel grade ethanol or other biofuels.

(b) [Reserved]

§ 1435.605 Competitive procedures.

(a) CCC will generally issue tenders for bids, before entering into contracts with any eligible sugar seller or buyer, with the intent of selecting the bid(s) that represents the least cost to CCC of removing sugar from the market.

(b) CCC may, at times, negotiate contracts directly with sellers or buyers, if CCC determines that such negotiation will result in either reduced likelihood of forfeited sugar under the CCC sugar loan program or reduced costs of removing sugar from the market, which will reduce the likelihood of forfeitures of sugar to CCC.

§ 1435.606 Miscellaneous.

(a) As a sugar buyer, a bioenergy producer must take possession of the sugar no more than 30 days from the date of CCC's purchase.

(b) CCC, to the maximum extent practicable, will not pay storage fees for the sugar purchased under this program. A bioenergy producer must assume any storage costs accrued from date of contract to date of taking possession of the sugar.

(c) Each bioenergy producer that purchases sugar through FFP must provide proof as specified by CCC that the sugar has been used in the bioenergy factory for the production of bioenergy and permit access for USDA to verify compliance.

§ 1435.607 Appeals.

(a) The administrative appeal regulations of parts 11 and 780 of this title apply to this part.

(b) [Reserved]

Signed on July 24, 2013.

Juan M. Garcia,

Administrator, Farm Service Agency, and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 2013–18160 Filed 7–26–13; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM12–19–000; Order No. 782]

Revisions to Modeling, Data, and Analysis Reliability Standard

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: In this Final Rule, pursuant to section 215 of the Federal Power Act, the Federal Energy Regulatory Commission (Commission) approves Modeling, Data, and Analysis (MOD) Reliability Standard MOD–028–2, submitted to the Commission for approval by the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization. The Commission finds that the proposed Reliability Standard represents an improvement over the currently-effective standard, MOD–028–1 because the proposed Reliability Standard clarifies the timing and frequency of Total Transfer Capability calculations needed for Available Transfer Capability calculations. The Commission also approves NERC's proposed implementation plan and retirement of the currently-effective standard.

DATES: This rule is effective September 27, 2013.

FOR FURTHER INFORMATION CONTACT:

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Christopher Young (Technical Information), Office of Energy of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6403, *christopher.young@ferc.gov.*

SUPPLEMENTARY INFORMATION:

144 FERC ¶ 61,027

United States Of America

Federal Energy Regulatory Commission

Before Commissioners: Jon Wellinghoff, Chairman; Philip D. Moeller, John R. Norris, Cheryl A. LaFleur, and Tony Clark.

Final Rule

Issued July 18, 2013.

1. Pursuant to section 215 of the Federal Power Act (FPA),[1] the Commission approves Modeling, Data, and Analysis (MOD) Reliability Standard MOD–028–2 submitted to the Commission by the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO). NERC submitted one modification to the currently-effective Reliability Standard MOD–028–1, pertaining to the information a transmission service provider[2] must include when calculating Total Transfer Capability (TTC) using the area interchange methodology for the on-peak and off-peak intra-day and next day time periods. The Commission also approves NERC's proposed implementation plan and retirement of the currently-effective Reliability Standard MOD–028–1.

I. Background

A. Mandatory Reliability Standards

2. Section 215 of the FPA requires a Commission-certified ERO to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval. Specifically, the Commission may approve, by rule or order, a proposed Reliability Standard or modification to a Reliability Standard if it determines that the Standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest.[3] Once approved, the Reliability Standards may be enforced by the ERO, subject to Commission oversight, or by the Commission independently.[4] Pursuant to section 215 of the FPA, the Commission established a process to select and certify an ERO,[5] and subsequently certified NERC.[6]

3. In March 2007, the Commission issued Order No. 693, evaluating 107 Reliability Standards, including 23 MOD standards pertaining to methodologies for calculating Available Transfer Capability (ATC) and Available Flowgate Capability (AFC).[7] The Commission approved one out of the 23 MOD standards unconditionally, approved nine with direction for modification and left the remaining 13 pending with direction for modification.[8]

4. On November 24, 2009, the Commission issued Order No. 729,[9] which approved Available Transmission System Capability Reliability Standard MOD–001–1 as part of a set of Reliability Standards that pertain to methodologies for the consistent and transparent calculation of ATC and AFC. These Reliability Standards were designed to ensure, among other things, that transmission service providers maintain awareness of available system capability and future flows on their own systems, as well as those of their neighbors, and to reduce transmission service provider discretion and enhance transparency in the calculation of ATC.[10] Requirement R1 of MOD–001–1 required a transmission operator to select one of three methodologies for calculation of ATC or AFC for each available ATC path for each time frame (hourly, daily or monthly). NERC developed these three methodologies as detailed in Reliability Standards MOD–028–1 (the area interchange methodology), MOD–029–1a (the rated system path methodology), and MOD–030–2 (the flowgate methodology).[11]

5. The MOD Reliability Standards require certain users, owners, and operators of the bulk power system to develop consistent and transparent methodologies for the calculation of ATC or AFC.[12] Three currently-effective Reliability Standards—MOD–028–1, MOD–029–1a, and MOD–030–2—address three different methodologies for calculating ATC or AFC.[13] MOD–028–1, which describes the area interchange methodology for determining ATC, only applies to those transmission operators and transmission service providers that elect to implement this particular methodology as part of their reliability compliance with Reliability Standard MOD–001–1. MOD–001–1 requires transmission service providers to ''[adhere] to a specific documented and transparent methodology'' and ''to select one of three methodologies for calculating [ATC] or [AFC] for each available transfer capability path for each time frame (hourly, daily or monthly) for the facilities in its area.[14]

6. Requirement R3.1 of MOD–028–1 details the information a transmission operator must include in its TTC determination under the area interchange methodology for the on-peak and off-peak intra-day and next day time periods, as well as future days two through 31 and for months two through 13.[15]

B. NERC Petition

7. On August 24, 2012, NERC submitted a Petition for Approval of Proposed Reliability Standard (Petition), seeking Commission approval of a proposed Reliability Standard, MOD–028–2, Area Interchange Methodology, Requirement R3.1, which would revise the currently effective ''Version 1'' standard—MOD–028–1.

8. NERC stated that Florida Power & Light Company (FPL) requested that NERC interpret MOD–028–1, Requirement R3.1. Specifically, FPL requested that NERC clarify whether Requirement R3.1, which instructs transmission operators to include data

[1] 16 U.S.C. 824o (2006).

[2] NERC defines ''transmission service provider'' as ''[t]he entity that administers the transmission tariff and provides Transmission Service to Transmission Customers under applicable transmission service agreements.'' NERC, *Glossary of Terms Used in NERC Reliability Standards* 64 (2011), *http://www.nerc.com/files/Glossary_of_Terms.pdf.* We also use the term ''transmission operator'' in this final rule, which is defined by NERC as ''[t]he entity responsible for the reliability of its ''local'' transmission system, and that operates or directs the operations of the transmission facilities.'' *Id.* These terms indicate distinct NERC functional entities, to which different requirements within the same Reliability Standard may apply. Accordingly, in the context of describing the requirement of a Reliability Standard, we necessarily use either or both terms where appropriate.

[3] *Id.* 824o(d)(2).

[4] *Id.* 824o(e)(3).

[5] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards,* Order No. 672, FERC Stats. & Regs. ¶ 31,204, *order on reh'g,* Order No. 672–A, FERC Stats. & Regs. ¶ 31,212 (2006).

[6] *North American Electric Reliability Corp.,* 116 FERC ¶ 61,062, *order on reh'g & compliance,* 117 FERC ¶ 61,126 (2006), *aff'd sub nom. Alcoa, Inc.* v. *FERC,* 564 F.3d 1342 (D.C. Cir. 2009).

[7] *Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, FERC Stats. & Regs. ¶ 31,242, at P 1046, *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007). *See also Preventing Undue Discrimination and Preference in Transmission* Service, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g,* Order No. 890–A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g,* Order No. 890–B, 123 FERC ¶ 61,299 (2008), *order on reh'g,* Order No. 890–C, 126 FERC ¶ 61,228 (2009) (directing public utilities to develop Reliability Standards and business practices to improve the consistency and transparency of ATC calculations).

[8] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1010.

[9] *Mandatory Reliability Standards for the Calculation of Available Transfer Capability, Capacity Benefit Margins, Transmission Reliability Margins, Total Transfer Capability, and Existing Transmission Commitments and Mandatory Reliability Standards for the Bulk Power System,* Order No. 729, 129 FERC ¶ 61,155 (2009), *order on clarification,* Order No. 729–A, 131 FERC ¶ 61,109, *order on reh'g and reconsideration,* Order No. 729–B, 132 FERC ¶ 61,027 (2010).

[10] Order No. 729, 129 FERC ¶ 61,155 at PP 87–89.

[11] *Id.* P 51.

[12] *Id.* P 1.

[13] *Id.* P 51.

[14] *Id.* P 19.

[15] *Id.* P 57 (stating that this information includes: expected generation and transmission outages, additions, and retirements; load forecasts; and unit commitment and dispatch order).

''[f]or on peak and off peak intra-day and next day TTCs,'' actually requires transmission operators to provide separate TTC numbers for different portions of the current day. NERC explained that, upon reviewing FPL's request for interpretation, the NERC Standards Committee determined that providing this clarification might require a modification to the Standard.[16] In its Petition, NERC asserted that it intended the language of MOD–028–1 to specify that, for TTC used in current-day and next-day ATC calculations, the load forecast used should be consistent with the period being calculated. Specifically, NERC stated:

Requirement R3 of the MOD–028–1 standard is proposed to be modified to clarify language regarding load forecasting, to indicate that for days two through 31, a daily load forecast is required (identical to the current standard); for months two through 13, a monthly load forecast is required (identical to the current standard); and for current-day and next-day, entities may use *either* a daily or hourly load forecast (the language being clarified). The new language clarifies and is consistent with the intent of the original requirement language, and does not materially change the standard.[17]

9. NERC thus proposed Reliability Standard MOD–028–2, which revises MOD–028–1 as follows:

R3. When calculating TTCs for ATC Paths, the Transmission Operator shall include the following data for the Transmission Service Provider's area …

R3.1. ~~For on peak and off peak intra day and next day~~For TTCs, use the following (as well as any other values and additional parameters as specified in the ATCID.

R3.1.1. Expected generation and Transmission outages, additions, and retirements, included as specified in the ATCID.

R.3.1.2. ~~Load~~A daily or hourly load forecast for ~~the applicable period being calculated~~TTCs used in current-day and next-day ATC calculations.

R.3.1.3. A daily load forecast for TTCs used in ATC calculations for days two through 31.

~~R.3.1.2.~~R3.1.4. A monthly load forecast for TTCs used in ATC calculations for months two through 13 months TTCs.

C. Notice of Proposed Rulemaking

10. On March 21, 2013, the Commission issued a Notice of Proposed Rulemaking (NOPR) proposing to approve Reliability Standard MOD–028–2 as just, reasonable, not unduly discriminatory or preferential, and in the public interest.[18] The Commission proposed to approve Reliability Standard MOD–028–2 after determining that it clarified requirement R3.1 of Reliability Standard MOD–028–1 and did not present reliability concerns.

11. While proposing to approve Reliability Standard MOD–028–2, the NOPR also identified possible market implications of NERC's proposed modification to requirement R3.1. The NOPR stated that, although NERC's statutory functions are properly focused on the reliability of the Bulk-Power System, the Commission has determined that the ERO should also attempt to develop Reliability Standards that have no undue negative effect on competition.[19]

12. The NOPR stated that NERC's proposed revision to requirement R3.1.2 allows a transmission operator flexibility to choose either a daily or hourly load forecast when forecasting current-day and next-day TTC. The NOPR sought comments regarding whether a transmission operator could potentially use a load forecast assumption that is not applicable to the period being calculated. As an example, the NOPR stated that a transmission operator using daily on-peak load forecasts in determining off-peak TTC for the current day could, either purposefully or inadvertently, suppress off-peak ATC used by generators that make off-peak sales, or other customers who purchase hourly service.

13. Comments in support of the NOPR were filed by NERC and Southern

[16] Petition, Exhibit E (Record of Development of Proposed Reliability Standard).

[17] Petition at 7 (emphasis added).

[18] *Revisions to Modeling, Data, and Analysis Reliability Standard,* Notice of Proposed Rulemaking, 78 FR 19,152 (Mar. 29, 2013), 142 FERC ¶ 61,210 (2013).

[19] *Id.* P 11 (citing Order No. 729, 129 FERC ¶ 61,155 at PP 109, 135).

Company Services, Inc., acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company (Southern Company Services).

II. Discussion

14. Pursuant to section 215(d)(2) of the FPA, we approve Reliability Standard MOD–028–2 as just, reasonable, not unduly discriminatory or preferential, and in the public interest. The Commission also approves NERC's proposed implementation plan, i.e., that the standard shall become effective on the first day of the first calendar quarter after Commission approval, and retirement of the currently-effective Reliability Standard MOD–028–1. NERC's clarifying revision to Requirement R3.1.2 of MOD–028–2 allows a transmission operator the flexibility to choose either a daily or hourly load forecast when forecasting current-day and next-day TTC. This revision does not present reliability concerns.

15. In the NOPR, the Commission asked for comment on a potential market-related concern regarding whether a transmission operator using daily on-peak load forecasts in determining off-peak TTC for the current day could, either purposefully or inadvertently, suppress off-peak ATC used by generators that make off-peak sales, or other customers who purchase hourly service. In response to the NOPR, two entities submitted comments, both supporting Commission approval of MOD–028–2. Southern Company Services comments that the flexibility in Requirement R3.1 does not give rise to the potential for undue discrimination in ATC calculations. NERC states that the proposed modification to Reliability Standard MOD–028–2 clarifies the existing language and provides flexibility for operators to select a methodology that best fits their needs. NERC comments that it ''expect[s] that entities will implement proposed Reliability Standard MOD–028–2 consistent with their existing legal obligations, i.e., pursuant to open access transmission tariffs, etc.'' [20] NERC adds that, ''while it might be possible for an entity to use a load forecast assumption that is not applicable to the period being calculated, the Commission can mitigate such risks through complaints and the Commission's market oversight authority.'' [21]

16. We are satisfied that the modification to Requirement R3.1 does not give rise to any immediate market-related concerns in the instant proceeding. No entity filed comments raising the concern that a transmission operator would use a load forecast assumption that is not applicable to the period being calculated. However, we agree with NERC that, consistent with Order No. 729, the risk of a transmission service provider using parameters and assumptions to skew its ATC values can be mitigated through complaints and market oversight authority.[22] In addition, as NERC also acknowledges, transmission operators must implement the revised Reliability Standard MOD–028–2 in a manner consistent with their existing legal obligations, including their obligations under their open access transmission tariffs.[23]

17. Accordingly, pursuant to FPA section 215(d)(2), we approve Reliability Standard MOD–028–2.

III. Information Collection Statement

18. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting and recordkeeping (collections of information) imposed by an agency.[24] The information contained here is also subject to review under section 3507(d) of the Paperwork Reduction Act of 1995.[25]

19. As stated above, the Commission previously approved, in Order No. 729, the Reliability Standard that is the subject of the current rulemaking. This Final Rule approves one revision to a previously approved Reliability Standard developed by NERC as the ERO. The minor revision relates to an existing Reliability Standard and does not add to or otherwise increase entities' current reporting burden. Thus, the revision does not materially affect the burden estimates relating to the currently effective version of the Reliability Standards presented in Order No. 729. The MOD–028–1 Reliability Standard that is subject of the approved revision was approved in Order No. 729, and the related information collection requirements were reviewed and approved, accordingly.[26] The Commission submitted the revised Reliability Standard to OMB as a request for ''no material'' or ''nonsubstantive'' change [27] at the NOPR stage. OMB approved the nonsubstantive change, requiring no further Commission action related to the information collection requirements.

IV. Environmental Analysis

20. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[28] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[29] The actions proposed herein fall within this categorical exclusion in the Commission's regulations.

V. Regulatory Flexibility Act

21. The Regulatory Flexibility Act of 1980 (RFA) [30] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a final rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's Office of Size Standards develops the numerical definition of a small business.[31] For electric utilities, a firm is small if, including its affiliates, it is primarily engaged in the transmission, generation and/or distribution of electric energy for sale and its total electric output for the preceding twelve months did not exceed four million megawatt hours. The Commission does not expect the revision adopted herein to materially affect the cost for small entities to comply with the proposed Reliability Standard. As discussed above, the clarifying revision allows transmission service providers more flexibility in calculating ATC and only *de minimis* costs are associated with implementation of the revision. Therefore, the Commission certifies that the Final Rule will not have a significant economic impact on a substantial number of small entities.

[20] NERC Comments at 3–4.

[21] *Id.* at 3.

[22] *See* Order No. 729, 129 FERC ¶ 61,155 at P 135.

[23] To the extent a market-related issue arises as a result of future changes to Reliability Standard MOD–028, we can address it at that time.

[24] 5 CFR 1320.11 (2012).

[25] 44 U.S.C. 3507(d).

[26] *See* Order No. 729, 129 FERC ¶ 61,155 at PP 307–312.

[27] This type of submittal means that there is no change to the existing burden estimates and the existing expiration date.

[28] *Regulations Implementing the National Environmental Policy Act,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[29] 18 CFR 380.4(a)(2)(ii).

[30] 5 U.S.C. 601–612.

[31] *See* 13 CFR 121.201.

VI. Document Availability

22. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

23. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

24. User assistance is available for eLibrary and the Commission's Web site during normal business hours from the Commission's Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202)502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

VII. Effective Date and Congressional Notification

25. These regulations are effective September 27, 2013. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

By the Commission.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–17813 Filed 7–26–13; 8:45 am]

BILLING CODE 6717–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA–2013–0016]

RIN 0960–AH58

Extension of Effective Date for Temporary Pilot Program Setting the Time and Place for a Hearing Before an Administrative Law Judge

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: We are extending our pilot program that authorizes the agency to set the time and place for a hearing before an administrative law judge (ALJ). This final rule will extend the pilot program for 1 year. The extension of the pilot program continues our commitment to improve the efficiency of our hearing process and maintain a hearing process that results in accurate, high-quality decisions for claimants. The current pilot program will expire on August 9, 2013. In this final rule, we are extending the effective date to August 9, 2014. We are making no other substantive changes.

DATES: This final rule is effective July 29, 2013.

FOR FURTHER INFORMATION CONTACT: Rainbow Forbes, Social Security Administration, 5107 Leesburg Pike, Falls Church, VA 22041–3260, 703–605–8100 for information about this final rule. For information on eligibility for filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Background

Over the past several years, one of our highest priorities has been to improve the efficiency of our hearing process for the Old Age, Survivors, and Disability Insurance (OASDI) programs under title II of the Social Security Act (Act) and the Supplemental Security Income (SSI) program under title XVI of the Act. We intended the pilot program we adopted in July 2010 (75 FR 39154), under which the agency, rather than the ALJ, may set the time and place of the hearing under certain circumstances, to be part of our efforts to improve the efficiency of the hearing process. Since that time, we continue to face significant challenges in dealing with the historically large number of hearing requests. Over the next several years, we anticipate that requests for hearings before ALJs will continue to remain high. Therefore, we must maintain programs and policies that can provide us with the flexibility we need to improve the efficiency of our hearing process.

On November 10, 2008, we published a notice of proposed rulemaking to amend our rules to allow the agency to set the time and place for a hearing before an ALJ. (73 FR 66564). At that time, we explained that we would continue to monitor ALJ productivity closely, and if hearings were not being scheduled in a prompt and professional manner, we would use all existing authorities to correct the situation. Although we expected limit use of the rule, we planned to monitor the success of the regulation to ensure that it did not produce unintended consequences.

Following receipt of public comments, we issued a final rule on July 8, 2010. (75 FR 39154). Under the rule, the agency acquired the authority to set the time and place for a hearing before an ALJ. In the rule, we explained that we would implement our authority to set the time and place for a hearing before an ALJ as a temporary pilot program. Therefore, we included in sections 404.936(h) and 416.1436(h) of the final rule a provision that the pilot program would end on August 9, 2013, unless we decided to either terminate the program earlier, or extend it beyond that date by publication of a final rule in the **Federal Register**.

Explanation of Extension

In establishing the final rule establishing the pilot program in 2010, we hoped to determine whether providing us with the authority to set the time and place of the hearing would allow us to better manage the number of hearings held and keep our hearing process as efficient as possible. During the 3 year pilot program, we tracked ALJ productivity closely. In situations where hearings were not being promptly scheduled, we worked with ALJs to correct these situations. To date, our efforts to work with our ALJs to correct situations in which we may have otherwise had to exercise the authority provided for in these rules has been successful. As a result, we have not been required to exercise our authority to schedule hearings. Nevertheless, we believe that we should continue the authority for the pilot program in order to provide us with the flexibility we need to manage the hearing process appropriately. We consider the pilot program a potentially important component in our overall effort to reduce hearing backlogs.

By extending the pilot program an additional year, we will continue to monitor the productivity of ALJs and to work with our ALJs to address any concerns regarding our hearing process. Accordingly, we are extending our authority to set the time and place for a hearing before an ALJ for another year, until August 9, 2014. As before, we are reserving the authority to end the program earlier, or to extend it by publishing a final rule in the **Federal Register**.

Regulatory Procedures

Justification for Issuing Final Rule Without Notice and Comment

We follow the Administrative Procedure Act (APA) rulemaking

procedures specified in 5 U.S.C. 553 when developing regulations. Section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5). Generally, the APA requires that an agency provide prior notice and opportunity for public comment before issuing a final rule. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures because they are impracticable, unnecessary, or contrary to the public interest. We have determined that good cause exists for dispensing with the notice and public comment procedures for this rule. 5 U.S.C. 553(b)(B). This final rule only extends the date on which the pilot program will no longer be effective. It makes no substantive changes to our rules. Our current regulations expressly provide that we may extend the expiration date of the pilot program by notice of a final rule in the **Federal Register**. Therefore, we have determined that opportunity for prior comment is unnecessary, and we are issuing this rule as a final rule.

In addition, for the reasons cited above, we find good cause for dispensing with the 30-day delay in the effective date of this final rule. 5 U.S.C. 553(d)(3). We are not making any substantive changes in our rules. Without an extension of the expiration date for the pilot program, we will not have the flexibility we need to ensure the efficiency of our hearing process. Therefore, we find it is in the public interest to make this final rule effective on the publication date.

Executive Order 12866 as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that this final rule does not meet the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563.

Regulatory Flexibility Act

We certify that this final rule will not have a significant economic impact on a substantial number of small entities because it affects individuals only. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

Paperwork Reduction Act

This final rule does not create any new or affect any existing collections and, therefore, does not require OMB approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income.)

List of Subjects

20 CFR Part 404

Administrative practice and procedure; Blind; Disability benefits; Old-age, Survivors, and Disability Insurance; Reporting and recordkeeping requirements; Social Security.

20 CFR Part 416

Administrative practice and procedure; Aged; Blind; Disability benefits; Public assistance programs; Reporting and recordkeeping requirements; Supplemental Security Income (SSI).

Dated: July 23, 2013.

Carolyn W. Colvin,

Acting Commissioner of Social Security.

For the reasons stated in the preamble, we are revising subpart J of Part 404 and subpart N of part 416 of title 20 of the Code of Federal Regulations as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart J—[Amended].

■ 1. The authority citation for subpart J of part 404 continues to read as follows:

Authority: Secs. 201(j), 204(f), 205(a)–(b), (d)–(h), and (j), 221, 223(i), 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a)–(b), (d)–(h), and (j), 421, 423(i), 425, and 902(a)(5)); sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. In § 404.936, revise the second sentence in paragraph (h) to read as follows:

§ 404.936 Time and place for a hearing before an administrative law judge.

* * * * *

(h) *Pilot program.* * * * These provisions will no longer be effective on August 9, 2014, unless we terminate them earlier or extend them beyond that date by notice of a final rule in the **Federal Register**.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart N—[Amended]

■ 3. The authority citation for subpart N of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 4. In § 416.1436, revise the second sentence in paragraph (h) to read as follows:

§ 416.1436 Time and place for a hearing before an administrative law judge.

* * * * *

(h) *Pilot program.* * * * These provisions will no longer be effective on August 9, 2014, unless we terminate them earlier or extend them beyond that date by notice of a final rule in the **Federal Register**.

[FR Doc. 2013–18143 Filed 7–26–13; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 411

[Docket No. SSA–2011–0034]

RIN 0960–AH34

Mailing of Tickets Under the Ticket To Work Program

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: This final rule adopts, without change, the interim final rule with request for comments we published in the **Federal Register** on January 12, 2012, at 77 FR 1862. The interim final rule modified our rules so that we *may* send a Ticket to Work (Ticket) to Ticket to Work program (Ticket program)-eligible disabled beneficiaries. Under our previous rules, we mailed initial Ticket notices to all Ticket-eligible beneficiaries immediately after they began receiving benefits, regardless of whether they were likely to participate in the program. This change did not affect Ticket eligibility requirements.

DATES: The interim final rule with request for comments published on January 12, 2012 is confirmed as final effective July 29, 2013.

FOR FURTHER INFORMATION CONTACT: Mark Green, Office of Retirement and Disability Policy, Office of Employment Support Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–9852. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION: Congress established the Ticket program in the

Ticket to Work and Work Incentives Improvement Act of 1999 to provide disability beneficiaries a choice in obtaining the services and technology that they need in order to find, secure, and maintain employment.[1] Under the Ticket program, we may issue Tickets to eligible Social Security disability beneficiaries and disabled or blind Supplemental Security Income (SSI) recipients. The beneficiary may use the Ticket to obtain vocational rehabilitation services, employment services, and other support services from an employment network or from a State vocational rehabilitation agency. This support allows these individuals to enter into and retain employment and reduces dependency on Social Security and SSI cash benefits.

Prior to the publication of our interim final rule with request for comments, we mailed Tickets to all Ticket-eligible beneficiaries shortly after we awarded a disability or blindness-related benefit, regardless of the likelihood that the beneficiary would participate in the program. Our interim final rule revised § 411.130 of our regulations so that we *may* send a Ticket to an eligible beneficiary and clarified that Ticket-eligible beneficiaries may receive a Ticket upon request. The change is consistent with the language of section 1148(b)(1) of the Social Security Act, which gives us discretion as to the form and manner in which Tickets may be distributed.[2] Removing the requirement that we send Tickets to all eligible beneficiaries regardless of the likelihood that the beneficiary will ever use the Ticket allows us to focus our limited resources on those beneficiaries who are most likely to return to work.

We inform all newly eligible disabled beneficiaries about their eligibility for the Ticket program in their award letters and we remind current Ticket-eligible beneficiaries of the availability of the program via routine correspondence. To increase awareness of the Ticket program, we are also conducting outreach directed toward eligible beneficiaries who are most likely to return to work. We will send a Ticket to any eligible beneficiary upon request, regardless of whether we have identified the beneficiary through our outreach efforts. This change has made the Ticket program more effective and has not affected Ticket eligibility requirements.

[1] Public Law 106–170.

[2] Section 1148(b)(1) of the Act states, ''The Commissioner may issue a ticket to work and self-sufficiency to disabled beneficiaries for participation in the Program.'' 42 U.S.C. 1348(b)(1).

Public Comments

We published an interim final rule with request for comments in the **Federal Register** at 77 FR 1862, on January 12, 2012, and provided a 60-day comment period. We received one comment from a member of the public. We carefully considered the concerns expressed in this comment, but did not make any changes to the interim final rule. Below is a summary of the comment and our response to the issues that are within the scope of the interim final rule.

Comment: The commenter expressed concern that we did not study how many participants in the Ticket program we could expect to drop out of the program if we changed the rule and how many people would need to drop out in order to create a net cost to us in excess of the expected one million dollar annual savings. The commenter also stated that we did not mention any possible increase in costs due to enhanced notification and outreach measures that may be required under the interim final rule.

Response: We did not adopt this comment. We stated that we ''will save about one million dollars each year in print and mail costs by informing newly eligible disabled beneficiaries about their eligibility for the Ticket program in their award letters instead of sending a separate piece of mail containing a ticket.'' [3] Since the rule only affected ''newly eligible disabled beneficiaries,'' we do not expect any current participants in the Ticket to drop out of the program because of this rule change. Current participants in the Ticket program are unaffected by the change in our rules because they already have a Ticket, and our interim final rules made it clear that current Ticket-eligible beneficiaries who do not have a Ticket may receive one upon request.

In addition, our re-focused outreach efforts have not resulted in any increase in costs. When we re-focused our outreach efforts, we included notification of eligibility for the Ticket program and reminders about the availability of the program in correspondence that we already send to beneficiaries, such as benefit award letters, cost-of-living adjustment notices, and certain other letters. Re-focusing our existing outreach budget on those beneficiaries most likely to return to work has helped us administer the Ticket program more efficiently without adversely affecting any beneficiary.

[3] 77 FR at 1862.

Regulatory Procedures

Executive Order 12866 as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that this final rule does not meet the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563.

Regulatory Flexibility Act

We certify that this final rule will not have a significant economic impact on a substantial number of small entities because it only affects individuals. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Paperwork Reduction Act

This final rule imposes no reporting or recordkeeping requirements subject to OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security Disability Insurance; 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 411

Administrative practice and procedure, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Social security, Supplemental Security Income (SSI), Vocational rehabilitation.

Dated: July 19, 2013.

Carolyn W. Colvin,

Acting Commissioner of Social Security.

■ Accordingly, the interim final rule amending 20 CFR chapter III, part 411, subpart B that was published at 77 FR 1862 on January 12, 2012 is adopted as a final rule without change.

[FR Doc. 2013–18148 Filed 7–26–13; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy (DoN) is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that

the Deputy Assistant Judge Advocate General (DAJAG) Admiralty and Maritime Law has determined that USS BUNKER HILL (CG 52) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: This rule is effective July 29, 2013 and is applicable beginning July 16, 2013.

FOR FURTHER INFORMATION CONTACT: Lieutenant Jocelyn Loftus-Williams, JAGC, U.S. Navy, Admiralty Attorney, (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave. SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone number: 202–685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the DoN amends 32 CFR Part 706.

This amendment provides notice that the DAJAG (Admiralty and Maritime Law) of the DoN, under authority delegated by the Secretary of the Navy, has certified that USS BUNKER HILL (CG 52) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 3(a), pertaining to the horizontal distance between the forward and after masthead lights. The DAJAG (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

For the reasons set forth in the preamble, amend part 706 of title 32 of the CFR as follows:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

■ 2. In § 706.2, in Table 5, revise the entry for USS BUNKER HILL (CG 52) to read as follows:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	No.	Masthead light not over all other lights and obstructions Annex I, Section 2(f)	Forward masthead light not in forward quarter of ship. Annex I, section 3(a)	After masthead light less than ½ ship's length aft of forward masthead light Annex I, Section 3(a)	Percentage horizontal separation attained
* * *	*	*		*	*
USS BUNKER HILL	CG 52		X	X	36.98
* * *	*	*		*	*

* * * * *

Approved: July 16, 2013.

A.B. Fischer,

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

Dated: July 18, 2013.

C.K. Chiappetta,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, **Federal Register** *Liaison Officer.*

[FR Doc. 2013–18100 Filed 7–26–13; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900–AO61

Patient Access to Records

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) amends its regulation governing disclosure of information to veterans and other beneficiaries. The current regulation provides for a special procedure for evaluating sensitive records and determining whether an individual may gain access to his or her own records. The special procedure allows VA to prevent an individual's access to his or her own records if VA determines that such release could have an adverse effect on the physical or mental health of a requesting individual. We have determined that this special procedure is contrary to law, and therefore remove it from the current regulation.

DATES: *Effective Date:* This final rule is effective July 29, 2013.

FOR FURTHER INFORMATION CONTACT: Stephania Griffin, Veterans Health Administration Privacy Officer, Office of Informatics and Analytics (10P2C), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (704) 245–2492. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974 (Privacy Act), 5 U.S.C. 552a, requires federal agencies maintaining a system of records to disclose to an individual any record or information pertaining to that individual upon request. The Privacy

Act provides safeguards for an individual against an invasion of personal privacy by requiring federal agencies to permit an individual to (1) determine what records pertaining to that individual are collected, maintained, used, or disseminated; (2) prevent records pertaining to that individual obtained by the agency for a particular purpose from being used or made available for another purpose without consent; and (3) gain access to information pertaining to that individual in agency records, to have a copy made of all or any portion thereof, and to correct or amend such records.

Federal agencies are required by the Privacy Act to establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him. These procedures may include, if deemed necessary, a special procedure ''for the disclosure to an individual of medical records, including psychological records, pertaining to him.'' 5 U.S.C. 552a(f)(3). However, the end result of any procedure, including the special procedure, must be disclosure of the records to the requesting individual. *Bavido* v. *Apfel,* 215 F.3d 743 (7th Cir. 2000). Although agencies are allowed to establish such special procedures, they are not required to do so.

Disclosure of VA records, however, has a competing authority. Under 38 U.S.C. 5701(b)(1), VA is required to disclose files, records, reports, and other documents pertaining to a claimant only when, in the judgment of VA, the disclosure ''would not be injurious to the physical or mental health of the claimant.''

VA developed a special procedure, pursuant to the Privacy Act and section 5701(b)(1), at 38 CFR 1.577(d). Under current § 1.577(d), in those cases where records contain information that may be injurious to the physical or mental health of the claimant, VA will either disclose the records to a physician or other professional person selected by the claimant, who can then disclose the information as that professional person may believe is indicated; arrange for the claimant to meet with a VA physician for a discussion of the contents before disclosure; or decide not to disclose the information. Denials of disclosure or access may be appealed to VA's Office of General Counsel.

In *Benavides* v. *U.S. Bureau of Prisons,* 995 F.2d 269 (D.C. Cir. 1993), the U.S. Court of Appeals for the D.C. Circuit considered a Department of Justice (DOJ) regulation that was published as a special procedure under 5 U.S.C. 552a(f)(3). In that case, the DOJ regulation allowed the agency to prevent disclosure to an individual of records pertaining to that individual. Instead, the DOJ regulation permitted the agency to disclose sensitive records to a physician designated by the requesting individual and required the designated physician to determine which records to disclose to the individual. *Benavides,* 995 F.2d at 271–72. The court held that this regulation was not permissible under 5 U.S.C. 552a(f)(3) because ''[a] regulation that expressly contemplates that the requesting individual may never see certain medical records is simply not a special procedure for disclosure to that person.'' *Benavides,* 995 F.2d at 272.

The special procedure in § 1.577(d) is similar to that considered by the court in *Benavides.* It operationalizes the requirement found in 38 U.S.C. 5701(b)(1) that VA disclose information to a veteran as to matters concerning the veteran only after VA determines that the disclosure would not be injurious to the physical or mental health of the veteran. Both the statute and regulation allow VA to withhold information it believes would be injurious.

Thus, 38 U.S.C. 5701(b)(1) and § 1.577(d) directly conflict with the Privacy Act. We have determined that the Privacy Act governs decisions regarding disclosure to a veteran of information pertaining to that veteran. The Act supersedes 38 U.S.C. 5701(b)(1) to the extent 38 U.S.C. 5701(b)(1) applies to Privacy Act protected records and is controlling. As a general rule of statutory construction, where two laws on the same subject are in conflict and the conflict cannot be reconciled, the later enacted law controls to the extent of the conflict. *J.E.M. Ag Supply, Inc.* v. *Pioneer Hi-Bred International Inc.,* 534 U.S. 124 (2001); *U.S.* v. *Borden Co.,* 308 U.S. 188 (1939); 1A Norman J. Singer & J.D. Shambie Singer, Sutherland Statutes and Statutory Construction § 23:9 (7th ed. 2009). This rule of construction is resorted to only when there is clearly an irreconcilable conflict, or the subsequent act of Congress clearly is intended to occupy the entire field covered by the prior enactment, and all other means of interpretation have been exhausted. *Elephant Butte Irrigation Dist. of New Mexico* v. *U.S. Dep't of Interior,* 269 F.3d 1158 (10th Cir. 2001).

The Privacy Act is applicable to all executive agencies and requires agencies to disclose to requesting individuals the content of records pertaining to them. It was intended to help individuals gain access to government records about themselves and to correct erroneous information in those records. *Blazy* v. *Tenet,* 194 F.3d 90, 95–96 (D.C. Cir. 1999). The Privacy Act was enacted to promote ''governmental respect for the privacy of citizens by requiring all departments and agencies of the executive branch and their employees to observe certain constitutional rules in the computerization, collection, management, use, and disclosure of personal information about individuals.'' S. Rep. No. 93–1183 (1974). When the individual to whom the information pertains is also the individual requesting the information, the Privacy Act presumes that disclosure to that individual will occur. *Wren* v. *Harris,* 675 F.2d 1144, 1146 (10th Cir. 1982); see also *Bavido,* 215 F.3d at 750; *Benavides,* 995 F.2d at 272.

The Privacy Act allows agencies to exempt certain records from access by the individual to whom the records pertain. These exemptions are found at 5 U.S.C. 552a(d)(5), 5 U.S.C. 552a(j), and 5 U.S.C. 552a(k). The content of veterans' records is not included as an exemption to disclosure under the Privacy Act. Because Congress recognized specific exceptions in the Privacy Act but did not authorize the exception in section 5701(b)(1) either specifically or through a general exception similar to the one in section 5701(b)(1), we believe the legislative intent behind the Privacy Act was to provide individuals with an unqualified right of access to their own health records. 2A Norman J. Singer & J.D. Shambie Singer, Sutherland Statutes and Statutory Construction § 47:23 (7th ed. 2009) (the express mention of one thing implies the exclusion of others).

The Privacy Act authorizes agencies to promulgate rules administering the process by which individuals may request records. However, as noted by the court in *Bavido,* while agencies are allowed under 5 U.S.C. 552a(f)(3) to develop special procedures for disclosure of health records in cases in which direct transmission could adversely affect a requesting individual, ''under the plain wording of the statute, these procedures eventually must lead to disclosure of the records to the requesting individual.'' *Bavido,* 215 F.3d at 750.

Section 30 of The World War Veteran's Act of 1924, Public Law 68–242, codified as 38 U.S.C. 5701(b)(1), is applicable to all VA records. The statute contains mandatory language, and it makes disclosure to requesting individuals conditional on VA finding that the content of the record will not be injurious to the physical or mental health of the veteran. Nondisclosure is required if VA determines that disclosure of the content will be

injurious. The two laws cannot be harmonized to the extent they both apply to Privacy Act protected records, as compliance with one means noncompliance with the other. We therefore find that the Privacy Act, which is the later enacted statute, is controlling authority with respect to Privacy Act protected records such as a veteran's medical records and claims files.

The special procedure in § 1.577(d) was published under the authority of the Privacy Act, but also recognizes the nondisclosure requirement provided for in 38 U.S.C. 5701(b)(1). This result is contrary to the letter, spirit, and intent of the Privacy Act. As the Privacy Act controls and is the last legislative expression regarding disclosure to individuals of Privacy Act protected records, we remove the special procedure from § 1.577(d) in its entirety and publish this as a final rule, as removal of the procedure as written is mandated by law.

While VA has the authority to establish a special procedure for disclosure of medical and mental health treatment records, we believe that any such special procedure places an unwarranted barrier to the veteran's access to information and is not needed. VA believes that imposing a special procedure on disclosure is contrary to our goal of providing patient-centered care, which depends on the full and timely sharing of information and full, informed patient participation in decision making regarding current and future health care. Removing barriers to a veteran's access to VA records will support a provider-patient relationship based on mutual trust and sharing of information and promote patient autonomy and shared decision making. Removing this regulation will directly benefit veterans by increasing access to their own health records and fulfill the intent of the Privacy Act by allowing the veteran to determine what records VA maintains and whether the content of those records should be amended.

In addition, the process of reviewing the content of existing health records for the existence of ''sensitive'' material diverts valuable resources that would otherwise be used to deliver medical services because doctors must take time away from direct medical care of veterans to review materials in records that must ultimately be provided to the veteran in any circumstance. Finally, the process thwarts VA's goal of providing veterans with direct access to information contained in their electronic health record (EHR). For example, health records marked as containing ''sensitive'' material cannot be made directly available to veterans via MyHealtheVet, the award-winning web-based VA tool that allows veterans to manage and access their health information. This could result in a two-tiered system wherein only some veterans have access to their entire EHR. The remaining veterans would in effect be stigmatized due to flagged content in their health records.

Administrative Procedure Act

This final rule is an interpretive rule that merely reflects VA's interpretation of the Privacy Act and 38 U.S.C. 5701(b)(1). Therefore, it is exempt from the prior notice-and-comment and delayed effective date requirements of 5 U.S.C. 553. See 5 U.S.C. 553(b)(A) and (d)(2). This final rule eliminates a special procedure that is contrary to law and a potential barrier to VA disclosing a veteran's health information to that veteran upon request as required under the Privacy Act. Providing patients with access to records upon request is consistent with controlling privacy laws and prevailing practice and is not controversial. This action will directly benefit veterans by eliminating a barrier to veterans receiving information that they are otherwise entitled to receive.

Effect of Rulemaking

Title 38 of the Code of Federal Regulations, as revised by this final rulemaking, represents VA's implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary guidance or procedures are authorized. All existing or subsequent VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule will directly affect only individuals and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

VA has examined the economic, interagency, budgetary, legal, and policy implications of this regulatory action, and it has been determined not to be a significant regulatory action under Executive Order 12866.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule 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 (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.007, Blind Rehabilitation Centers;

64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; and 64.022, Veterans Home Based Primary Care.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Interim Chief of Staff, Department of Veterans Affairs, approved this document on June 26, 2013, for publication.

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Archives and records, Cemeteries, Claims, Courts, Crime, Flags, Freedom of information, Government contracts, Government employees, Government property, Infants and children, Inventions and patents, Parking, Penalties, Privacy, Reporting and recordkeeping requirements, Seals and insignia, Security measures, Wages.

Dated: July 23, 2013.

Robert C. McFetridge,

Director, Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 1 as follows:

PART 1—GENERAL PROVISIONS

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

Authority: 38 U.S.C. 501(a), and as noted in specific sections.

■ 2. Amend § 1.577 by:

■ a. Removing paragraph (d).

■ b. Redesignating paragraphs (e) through (g) as new paragraphs (d) through (f), respectively.

■ c. In newly designated paragraph (e)(3), in the ''Activity and Fees'' table, removing ''(f)(1)'' and adding, in its place, ''(e)(1)''.

[FR Doc. 2013–18057 Filed 7–26–13; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2012–0348; FRL–9839–8]

Approval and Promulgation of State Implementation Plans; State of North Dakota; Interstate Transport of Pollution for the 2006 $PM_{2.5}$ NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving portions of a State Implementation Plan (SIP) submission from the State of North Dakota which demonstrates 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''). Specifically, EPA is approving the portion of the North Dakota SIP submission that addresses the CAA requirement prohibiting emissions from North Dakota 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.

DATES: *Effective Date:* This final rule is effective August 28, 2013.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2012–0348. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (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 through *www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, 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.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *NAAQS* mean or refer to National Ambient Air Quality Standards.

(iv) The initials *SIP* mean or refer to State Implementation Plan.

(v) The initials *NDDH* mean or refer to the North Dakota Department of Health.

(vi) The words *North Dakota* and *State* mean the State of North Dakota.

Table of Contents

I. Background
II. Response to Comments
III. Final Action
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I. Background

On October 17, 2006 EPA promulgated a new NAAQS for $PM_{2.5}$, revising the level of the 24-hour $PM_{2.5}$ standard to 35 μg/m³ and retaining the level of the annual $PM_{2.5}$ standard at 15 μg/m³. (71 FR 61144). By statute, SIPs meeting the ''infrastructure'' requirements of CAA sections 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised standard. Among the infrastructure requirements of section 110(a)(2) are the ''interstate transport'' requirements of section 110(a)(2)(D).

CAA section 110(a)(2)(D)(i) identifies four distinct elements related to the evaluation of impacts of interstate transport of air pollutants. In this action for the state of North Dakota, EPA is addressing the first two elements of section 110(a)(2)(D)(i) with respect to the 2006 $PM_{2.5}$ NAAQS.[1] The first element of section 110(a)(2)(D)(i) 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

[1] This action does not address the two elements of the transport SIP provision (in CAA 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.

another state. The second element of CAA section 110(a)(2)(D)(i) 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.

On August 12, 2010, the North Dakota Department of Health (NDDH) provided a submission to EPA certifying that North Dakota's SIP is adequate to implement the 2006 $PM_{2.5}$ NAAQS for all the ''infrastructure'' requirements of CAA section 110(a)(2). This submission included a transport analysis to support the conclusion that North Dakota's SIP meets the requirements of CAA section 110(a)(2)(D)(i)(I) for this NAAQS.[2]

On May 13, 2013 (78 FR 27888), EPA proposed to approve the 110(a)(2)(D)(i)(I) portion of NDDH's August 12, 2010 submission. As described in detail in that notice, we based our proposed approval on modeling performed for the Cross State Air Pollution Rule (August 8, 2011, 76 FR 48208). Using the results of that modeling, we determined that emissions from North Dakota do not significantly contribute to nonattainment or interfere with maintenance of the 2006 $PM_{2.5}$ NAAQS in any other state. As a result, we proposed to conclude that North Dakota's existing SIP is adequate to address the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2006 $PM_{2.5}$ NAAQS, and that additional control measures in North Dakota are not necessary for this purpose.

II. Response to Comments

EPA did not receive any comments on the May 13, 2013 proposal.

III. Final Action

EPA is approving the 110(a)(2)(D)(i)(I) portion of North Dakota's August 12, 2010 SIP submission. For reasons described in the proposal for this action, we conclude that the existing SIP is adequate to address the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2006 $PM_{2.5}$ NAAQS.

IV. Statutory and Executive Order Reviews

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 27, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile Organic Compounds.

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

Dated: July 12, 2013.

Shaun L. McGrath,

Regional Administrator, Region 8.

40 CFR part 52 is amended to read as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart JJ—North Dakota

2. Section 52.1833 is amended by designating existing paragraph as (a) and adding paragraph (b) to read as follows:

§ 52.1833 Section 110(a)(2) infrastructure requirements.

* * * * *

(b) On August 12, 2010, Tom Bachman, Senior Environmental Engineer, North Dakota Department of Health, submitted a completeness criteria checklist which provides the State of North Dakota's SIP provisions which meet the requirements of CAA

[2] NDDH's submission, dated August 12, 2010, is included in the docket for this action.

Section 110(a)(1) and (2). The following element is approved for the 2006 $PM_{2.5}$ NAAQS: (D)(i)(I).

[FR Doc. 2013–18038 Filed 7–26–13; 8:45 am]

BILLING CODE 6560–50–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA–2013–0006]

RIN 0960–AH56

Extension of Sunset Date for Attorney Advisor Program

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: We are extending for 2 years our rule authorizing attorney advisors to conduct certain prehearing procedures and to issue fully favorable decisions. The current rule will expire on August 9, 2013. In this final rule, we are extending the sunset date to August 7, 2015. We are making no other substantive changes.

DATES: This final rule is effective July 29, 2013.

FOR FURTHER INFORMATION CONTACT: Susan Swansiger, Social Security Administration, 5107 Leesburg Pike, Falls Church, VA 22041–3260, 703–605–8500 for information about this final rule. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION:

Background of the Attorney Advisor Program

On August 9, 2007, we issued an interim final rule permitting some attorney advisors to conduct certain prehearing procedures and issue decisions that are fully favorable when the documentary record warrants. 72 FR 44763. We instituted this practice to provide more timely service to the increasing number of applicants for Social Security disability benefits and Supplemental Security Income payments based on disability. We considered the public comments we received on the interim final rule and, on March 3, 2008, we issued the rule without change as a final rule. 73 FR 11349. Under this rule, some attorney advisors may develop claims and, in appropriate cases, issue fully favorable decisions before a hearing.

We originally intended the attorney advisor program to be only a temporary modification to our procedures. Therefore, we included in sections 404.942(g) and 416.1442(g) of the interim final rule a provision that the program would end on August 10, 2009, unless we decided to either terminate the rule earlier or extend it beyond that date by publication of a final rule in the **Federal Register**. On July 13, 2009, we published a final rule that extended the sunset date of the program until August 10, 2011. 74 FR 33327. We then published another extension on April 4, 2011, which extended the sunset date of the program until August 9, 2013. 76 FR 18383.

Explanation of Extension

When we published the final rules reinstating the attorney advisor program in 2008, we discussed a variety of concerns about the program and we stated our intent to closely monitor it and to make changes to the program if it did not meet our expectations. 73 FR 11349, 11350, 11351, and 11352.

As we explained in the final rule in 2008, the number of requests for hearings has increased significantly in recent years, and based on this trend, we anticipate that higher levels of request for hearings will continue. The attorney advisor program has proven to be an invaluable tool in our efforts to reduce the backlog of pending hearing requests.

Accordingly, we have decided to extend the attorney advisor rule for another 2 years, until August 7, 2015. As before, we are reserving the authority to end the program earlier or to extend it by publishing a final rule in the **Federal Register**.

Regulatory Procedures

Justification for Issuing Final Rule Without Notice and Comment

We follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 when developing regulations. Section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5). The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures because they are impracticable, unnecessary, or contrary to the public interest. We have determined that good cause exists for dispensing with the notice and public comment procedures for this rule. 5 U.S.C. 553(b)(B). Good cause exists because this final rule only extends the sunset date of an existing rule. It makes no substantive changes to the rule. The current regulations expressly provide that we may extend or terminate this rule. Therefore, we have determined that opportunity for prior comment is unnecessary, and we are issuing this rule as a final rule.

Executive Order 12866 as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that this final rule does not meet the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563.

Regulatory Flexibility Act

We certify that this final rule will not have a significant economic impact on a substantial number of small entities because it affects individuals only. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

Paperwork Reduction Act

This final rule does not create any new or affect any existing collections and, therefore, does not require OMB approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income.)

List of Subjects

20 CFR Part 404

Administrative practice and procedure; Blind; Disability benefits; Old-age, Survivors and Disability Insurance; Reporting and recordkeeping requirements; Social security.

20 CFR Part 416

Administrative practice and procedure; Reporting and recordkeeping requirements; Supplemental Security Income (SSI).

Dated: July 22, 2013.

Carolyn W. Colvin,

Acting Commissioner of Social Security.

For the reasons stated in the preamble, we are revising subpart J of part 404 and subpart N of part 416 of title 20 of the Code of Federal Regulations as set forth below:

PART 404—FEDERAL OLD–AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart J—[Amended].

■ 1. The authority citation for subpart J of part 404 continues to read as follows:

Authority: Secs. 201(j), 204(f), 205(a)–(b), (d)–(h), and (j), 221, 223(i), 225, and 702(a)(5)

of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a)–(b), (d)–(h), and (j), 421, 423(i), 425, and 902(a)(5)); sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. In § 404.942, revise paragraph (g) to read as follows:

§ 404.942 Prehearing proceedings and decisions by attorney advisors.

* * * * *

(g) *Sunset provision.* The provisions of this section will no longer be effective on August 7, 2015, unless we terminate them earlier or extend them beyond that date by notice of a final rule in the **Federal Register**.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart N—[Amended].

■ 3. The authority citation for subpart N continues to read as follows:

Authority: Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 4. In § 416.1442, revise paragraph (g) to read as follows:

§ 416.1442 Prehearing proceedings and decisions by attorney advisors.

* * * * *

(g) *Sunset provision.* The provisions of this section will no longer be effective on August 7, 2015, unless we terminate them earlier or extend them beyond that date by notice of a final rule in the **Federal Register**.

[FR Doc. 2013–18145 Filed 7–26–13; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2013–0002; Internal Agency Docket No. FEMA–8291]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at *http://www.fema.gov/fema/csb.shtm.*

DATES: *Effective Dates:* The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region III				
Virginia: Arlington County	515520	July 24, 1970, Emerg; December 31, 1976, Reg; August 19, 2013, Susp.	Aug. 19, 2013 ...	Aug. 19, 2013.
Region IV				
South Carolina:				
Clarendon County, Unincorporated Areas.	450051	July 23, 1975, Emerg; June 3, 1991, Reg; August 19, 2013, Susp.	.....do*	Do.
Manning, City of, Clarendon County	450052	June 12, 1975, Emerg; April 15, 1986, Reg; August 19, 2013, Susp.	.....do	Do.
Summerton, Town of, Clarendon County.	450054	January 13, 1975, Emerg; June 3, 1986, Reg; August 19, 2013, Susp.	.....do	Do.
Region V				
Ohio:				
Brunswick, City of, Medina County	390380	April 5, 1973, Emerg; January 2, 1981, Reg; August 19, 2013, Susp.	.....do.	Do.
Chippewa Lake, Village of, Medina County.	390910	February 24, 2000, Emerg; August 4, 2008, Reg; August 19, 2013, Susp.	.....do	Do.
Gloria Glens Park, Village of, Medina County.	390381	September 12, 1975, Emerg; August 19, 1985, Reg; August 19, 2013, Susp.	.....do	Do.
Lodi, Village of, Medina County	390382	July 7, 1975, Emerg; August 4, 2008, Reg; August 19, 2013, Susp.	.....do	Do.
Medina, City of, Medina County	390383	May 30, 1975, Emerg; September 30, 1988, Reg; August 19, 2013, Susp.	.....do	Do.
Medina County, Unincorporated Areas	390378	September 6, 1978, Emerg; August 15, 1983, Reg; August 19, 2013, Susp.	.....do	Do.
Seville, Village of, Medina County	390384	September 23, 1975, Emerg; April 15, 1986, Reg; August 19, 2013, Susp.	.....do	Do.
Region VII				
Iowa:				
Cedar County, Unincorporated Areas ...	190050	July 16, 1981, Emerg; August 5, 1985, Reg; August 19, 2013, Susp.	.....do	Do.
Dubuque, City of, Dubuque County	195180	May 15, 1970, Emerg; April 2, 1971, Reg; August 19, 2013, Susp.	.....do	Do.
Dubuque County, Unincorporated Areas	190534	May 24, 1974, Emerg; September 1, 1983, Reg; August 19, 2013, Susp.	.....do	Do.
Durant, City of, Cedar County	190922	November 5, 1975, Emerg; June 11, 1976, Reg; August 19, 2013, Susp.	.....do	Do.
Tipton, City of, Cedar County	190057	July 2, 1975, Emerg; September 4, 1985, Reg; August 19, 2013, Susp.	.....do	Do.
West Branch, City of, Cedar County	190058	December 15, 1975, Emerg; March 16, 1983, Reg; August 19, 2013, Susp.	.....do	Do.
Region X				
Alaska: Juneau, City and Borough	020009	May 22, 1970, Emerg; February 4, 1981, Reg; August 19, 2013, Susp.	.....do	Do.

*-do- = Ditto.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp—Suspension.

Dated: July 8, 2013.

David L. Miller,

Associate Administrator, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2013–18134 Filed 7–26–13; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2013–0002; Internal Agency Docket No. FEMA–8289]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at *http://www.fema.gov/fema/csb.shtm.*

DATES: *Effective Dates:* The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR Part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region I				
Connecticut:				
East Lyme, Town of, New London County.	090096	October 23, 1973, Emerg; June 15, 1981, Reg; August 5, 2013, Susp.	Aug. 5, 2013	Aug. 5, 2013.
Groton, City of, New London County	090126	September 18, 1973, Emerg; May 15, 1980, Reg; August 5, 2013, Susp.	do*	Do.
Groton, Town of, New London County	090097	February 18, 1972, Emerg; April 15, 1977, Reg; August 5, 2013, Susp.	do	Do.
Groton Long Point Association, New London County.	090167	August 20, 1974, Emerg; March 18, 1980, Reg; August 5, 2013, Susp.	do	Do.
New London, City of, New London County.	090100	March 24, 1972, Emerg; May 2, 1977, Reg; August 5, 2013, Susp.	do	Do.
Noank Fire District, New London County.	090129	September 25, 1973, Emerg; September 17, 1980, Reg; August 5, 2013, Susp.	do	Do.
Old Lyme, Town of, New London County.	090103	April 10, 1973, Emerg; July 16, 1980, Reg; August 5, 2013, Susp.	do	Do.
Stonington, Borough of, New London County.	090193	May 4, 1976, Emerg; November 1, 1979, Reg; August 5, 2013, Susp.	do	Do.
Stonington, Town of, New London County.	090106	May 28, 1975, Emerg; September 30, 1980, Reg; August 5, 2013, Susp.	do	Do.
Waterford, Town of, New London County.	090107	August 23, 1974, Emerg; February 4, 1981, Reg; August 5, 2013, Susp.	do	Do.
Region III				
Maryland:				
Easton, Town of, Talbot County	240067	October 9, 1974, Emerg; September 28, 1984, Reg; August 5, 2013, Susp.	do	Do.
Oxford, Town of, Talbot County	240068	March 27, 1974, Emerg; September 28, 1984, Reg; August 5, 2013, Susp.	do	Do.
Saint Michaels, Town of, Talbot County	240069	February 7, 1975, Emerg; November 1, 1984, Reg; August 5, 2013, Susp.	do	Do.
Talbot County, Unincorporated Areas	240066	September 6, 1974, Emerg; May 15, 1985, Reg; August 5, 2013, Susp.	do	Do.
Trappe, Town of, Talbot County	240108	N/A, Emerg; August 15, 2006, Reg; August 5, 2013, Susp.	do	Do.
Region IV				
Georgia:				
Bloomingdale, City of, Chatham County	130452	October 6, 1975, Emerg; July 2, 1981, Reg; August 5, 2013, Susp.	do	Do.
Chatham County, Unincorporated Areas	130030	September 18, 1970, Emerg; August 1, 1980, Reg; August 5, 2013, Susp.	do	Do.
Garden City, City of, Chatham County	135161	October 8, 1971, Emerg; March 16, 1973, Reg; August 5, 2013, Susp.	do	Do.
Pooler, City of, Chatham County	130261	November 27, 1974, Emerg; September 30, 1981, Reg; August 5, 2013, Susp.	do	Do.
Port Wentworth, City of, Chatham County.	135162	June 4, 1971, Emerg; March 16, 1973, Reg; August 5, 2013, Susp.	do	Do.
Savannah, City of, Chatham County	135163	September 18, 1970, Emerg; May 21, 1971, Reg; August 5, 2013, Susp.	do	Do.
Kentucky:				
Ashland, City of, Boyd County	210017	March 19, 1975, Emerg; September 29, 1978, Reg; August 5, 2013, Susp.	do	Do.
Boyd County, Unincorporated Areas	210016	December 12, 1975, Emerg; December 2, 1980, Reg; August 5, 2013, Susp.	do	Do.
Catlettsburg, City of, Boyd County	210018	August 21, 1975, Emerg; January 3, 1979, Reg; August 5, 2013, Susp.	do	Do.
Tennessee:				
Farragut, Town of, Knox County	470387	August 14, 1970, Emerg; July 23, 1971, Reg; August 5, 2013, Susp.	do	Do.
Knox County, Unincorporated Areas.	475433	August 14, 1970, Emerg; July 23, 1971, Reg; August 5, 2013, Susp.	do	Do.
Knoxville, City of, Knox County	475434	August 14, 1970, Emerg; April 30, 1971, Reg; August 5, 2013, Susp.	do	Do.

*-do- = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp—Suspension.

Dated: July 8, 2013.

David L. Miller,

Associate Administrator, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2013–18135 Filed 7–26–13; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WC Docket No. 07–38; GN Docket Nos. 09–47 and 09–51, FCC 10–71]

Broadband Data Improvement Act; Eligible Entities Aggregate Form 477 Data

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission adopts rules interpreting and implementing sections of the Broadband Data Improvement Act (BDIA). These rules will facilitate the broadband mapping and other projects that eligible entities are undertaking under the BDIA to improve available data on broadband deployment and adoption.

DATES: Effective August 28, 2013.

FOR FURTHER INFORMATION CONTACT: Suzanne Yelen, Assistant Division Chief, at 202–418–0626, Industry Analysis and Technology Division, Wireline Competition Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Eligible Entities Aggregate Form 477 Data Order (Order) in WC Docket No. 07–38; GN Docket Nos. 09–47 and 09–51; FCC 10–71, released on April 26, 2010. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street SW., Washington, DC 20554, and may also be purchased from the Commission's copy contractor, BCPI, Inc., Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI, Inc. via their Web site, *http://www.bcpi.com,* or call 1–800–378–3160. This document is available in alternative formats (computer diskette, large print, audio record, and Braille). Persons with disabilities who need documents in these formats may contact the FCC by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

Synopsis of Order

1. Form 477 Data Collection. Since May 2000, the Commission has collected information from facilities-based providers of broadband connections on a semi-annual basis using Form 477. The Commission revised the Form 477 data collection program in 2008, and wireline and terrestrial-fixed wireless broadband service providers must now report, by Census Tract, the number of broadband subscribers, broken down by technology; more disaggregated speed tiers; and percentage of subscribers that are residential. Incumbent LECs must continue to report the percentage of their service areas to which DSL connections are available to residential end-user premises, and cable system operators must do the same with regard to cable modem service availability. Providers of terrestrial mobile wireless (TMW) broadband services must continue to submit their broadband subscriber totals on a state-by-state basis, rather than at the Census-Tract level, and must report the Census Tracts that ''best represent'' their broadband service footprint for each speed tier in which they offer service. The Commission also collects local telephone competition data from wireline and wireless providers.

2. The Commission also sought comment in 2008 on further revising several aspects of its Form 477 collection, including whether and how to institute a nationwide broadband availability mapping program. Of relevance for the issues here, the Commission sought comment ''on ways in which we can preserve confidentiality when sharing the information collected on Form 477, the voluntary registry, and other sources with agencies such as the Department of Agriculture's Rural Utilities Service and with public-private partnerships such as ConnectKentucky and similar ventures, for example by sharing the data in a less granular or aggregated form than the level at which it is collected.''

3. Form 477 Confidentiality. Due to the unique nature of this data collection, the Commission allows filers to request confidential treatment for competitively sensitive information by making a selection on the cover page of Form 477 without filing at that point the detailed confidentiality justification otherwise required by our rules. In establishing this framework, the Commission announced its intention not to reveal individual-provider data in published reports. At present, the Commission publishes aggregate Form 477 data in its Internet Access Services Report (formerly the High Speed Services report) and Broadband Progress Report (formerly the Section 706 report). In making the Form 477 data publicly available, the Commission has had a longstanding policy of ''releasing only aggregated information about broadband deployment . . . to protect against release of company-specific information directly or indirectly.'' Both in the reports and the accompanying statistical summaries, the Commission has used ''statistical methods, such as suppression and aggregation'' to prevent the release of company-specific information.

4. The Commission has not made any formal findings about which data elements constitute competitively sensitive information and has never ruled on any requests for confidentiality. The Wireline Competition Bureau (WCB) has invoked FOIA Exemption 4 to protect against disclosure of filers' Zip-Code and other data in response to requests for that information under FOIA. In the one case where the Bureau's denial of access to Form 477 data was appealed, the federal district court affirmed the Commission's decision not to release Zip-Code data.

5. State Commission Access to Raw Form 477 Data. In establishing the Form 477 data collection, the Commission created a limited exception to its general policy of releasing only aggregated and redacted Form 477 data. Specifically, it established a mechanism to allow state public utility commissions to view all disaggregated state-specific data, provided that the state commission has appropriate confidentiality protections in place (which may include confidentiality agreements or designation of information as proprietary under state law). Where the relevant state law affords less protection than federal FOIA law, the state must agree to comply with the higher federal standard as a precondition to the data release. The Commission has delegated to the Chief of the WCB authority to release the information where these conditions are satisfied.

6. Broadband Data Improvement Act. On October 10, 2008, Congress passed the Broadband Data Improvement Act (BDIA), Broadband Data Improvement Act of 2008, Pub. L. No. 110–385, 122 Stat. 4097 (codified at 47 U.S.C. 1301–04), which provides for improved federal data on the deployment and adoption of broadband services. Section 106(h)(1) of the BDIA, entitled ''Access to Aggregate Data,'' provides that, ''[s]ubject to paragraph (2), the Commission shall provide eligible entities access, in electronic form, to aggregate data collected by the

Commission based on the Form 477 submissions of broadband service providers.'' The BDIA defines ''eligible entity'' to be an entity that is (i) an agency or instrumentality of a State, or a municipality or other subdivision; (ii) a nonprofit organization; or (iii) an independent agency or commission in which an office of a State is a member on behalf of the State; and is the single eligible entity in the State that has been designated by the State to receive a grant under BDIA section 106(i)(2).

7. Section 106(h)(2) of the BDIA imposes certain confidentiality requirements on eligible entities that receive the FCC Form 477 ''aggregate data.'' Section 106(b) of the BDIA sets forth the primary role for eligible entities through the establishment of a State Broadband Data and Development Grant Program (Program), which requires the Secretary of Commerce to award grants ''to eligible entities for the development and implementation of statewide initiatives to identify and track the availability and adoption of broadband services within each State.'' Section 106(e) identifies ten activities to be funded through the Program, which include the creation within each State of a geographic inventory map of broadband service availability. On July 2, 2009, NTIA released a Notice of Funding Availability (NOFA), 74 FR 32545, on funding this program, which defined several key terms for the purposes of the state broadband program. The NOFA defines ''broadband'' to include data-transmission technology with advertised speeds of at least 768 kbps downstream and at least 200 kbps upstream to end users. An ''area,'' consisting of ''one or more contiguous census blocks,'' is considered to be an ''underserved area'' if at least one of three factors is met: (1) 50% or fewer households in the area have access to facilities-based terrestrial broadband service, (2) no fixed or mobile broadband service provider advertises broadband transmission speeds of at least three Mbps downstream in the area, or (3) the rate of household broadband subscribership in the area does not exceed 40%. An area is ''unserved'' for purposes of the NOFA if 90% of households in the area lack access to facilities-based terrestrial broadband service. NTIA later issued a clarification of the Technical Appendix to the NOFA, 74 FR 40569, and later provided additional guidance to its implementation of the Program by posting responses to Frequently Asked Questions.

8. On July 17, 2009, the Commission issued a Public Notice seeking comment on how to interpret and implement sections 106(h)(1) and 106(h)(2) of the BDIA. On September 9, 2009, NTIA published a list of the eligible applicants that had filed applications under the Program, from all 50 states, five territories, and the District of Columbia. NTIA announced on October 5, 2009, that it had awarded the first four grants under the Program. As of March 5, 2010, NTIA had awarded a total of 54 grants totaling approximately $102 million under the Program.

9. Interpretation of ''Aggregate Data'' under section 106(h)(1). While the BDIA does not include an explanation for the requirement that the Commission provide ''aggregate'' Form 477 data to eligible entities, the only mention of eligible entities in the statute is in connection with the State Broadband Data and Development Grant Program (Program) contemplated by section 106(b). Accordingly, we find the only reasonable interpretation of the requirement to be that Congress intended the Commission to provide aggregate Form 477 data to eligible entities in order to support the activities to be funded through the Program, as identified in section 106(e). This conclusion informs our interpretation of the requirement and the meaning of ''aggregate.'' In this regard, we note that section 106(e) sets forth a range of activities that grants can support, and NTIA has made clear that ''[w]ith respect to this Program, NTIA's highest priority is the development and maintenance of a national broadband map.''

10. We also conclude that, at a minimum, section 106(h)(1) requires the Commission to aggregate at least some of the Form 477 data that it collects, and that ''aggregate data'' necessarily includes some confidential information. Traditional canons of statutory interpretation compel us to read all of section 106(h) to have meaning. We therefore conclude that the BDIA's use of the term ''aggregate'' in section 106(h)(1) directs us to collapse or combine some of the granular categories of information collected on Form 477. Several commenters assert that we should share fully disaggregated, raw Form-477 data with eligible entities, largely because Census-Tract data are already an aggregation of Census Block information or street address availability, and the NTIA has already directed the grantees to collect such availability data from providers. We do not find these arguments persuasive; logically, ''aggregate data'' must mean something other than fully disaggregated data. Moreover, the statute directs us to aggregate the data we collect through Form 477, not to aggregate based on a broader set of more granular data that we do not collect. Similarly, we also conclude that Congress contemplated that ''aggregate [Form 477] data'' would include some confidential information, to avoid rendering section 106(h)(2) superfluous or irrelevant.

11. We squarely reject the argument advanced by some commenters that, under the Commission's longstanding treatment of Form 477 broadband information, ''aggregate data'' must mean that no provider-specific data are to be disclosed. Such an interpretation misreads or overstates precedent in several ways. First and foremost, we find that previous statements regarding Commission policies of data disclosure to the public have little if any relevance in the context of disclosure to designees selected by states subject to the protective provisions of this Order, and the existence of our past practices does not indicate congressional intent to extend Form 477 reporting methodologies to this context. The issue of defining ''aggregate data'' to share with a state designee is a novel one for the Commission, and past references in a distinct context do not dispositively define this term here. Similarly, we find reliance on Bureau-level actions to establish longstanding Commission precedent to be inappropriate here.

12. Accordingly, we interpret ''aggregate data'' to mean data that are combined in a manner that involves providing utility to eligible entities in carrying out activities under section 106(e), while protecting the confidentiality interests of providers submitting the data. In crafting a balance between sharing as much as possible to help eligible entities and preserving confidentiality, we rely heavily on the language and purpose of the BDIA, as well as on the lines drawn by the NTIA in its NOFA and subsequent guidance in implementing the statute. Specifically, our guiding policy in aggregating data is to maximize disclosure to eligible entities to allow them to carry out their activities under section 106(e) without unnecessarily disseminating, or creating an undue risk of misuse of, data the Commission has historically protected.

13. In making this determination, we acknowledge that competitively sensitive information will be shared with eligible entities, and that, especially where there are only one or two providers in an area, eligible entities may be able to reverse engineer additional granularity for some data. In light of the confidentiality protections of section 106(h)(2), however, this will not make confidential data available to the

general public. In combination with the additional safeguards we impose today, we find that our sharing of this information with eligible entities is consistent with, and indeed necessary to furthering, the overall purposes of the statute.

14. We emphasize that the decisions we reach in this Order are limited to the issues raised in the Public Notice, and that we do not reach any of the issues regarding disclosure of Form 477 data to the public that many commenters raise and which remain pending. As we explain in more detail below, eligible entities are expressly prohibited from publishing directly or indirectly any of the aggregate data that they access. We also recognize that several designated awardees are state commissions, which have rights to disaggregated data through the data-sharing mechanism set forth our prior orders. We emphasize that nothing we do here today expands or diminishes the rights and obligations of state commissions as set forth in that order.

15. Aggregate Data Sets. As set forth below, we have developed a data-sharing framework intended to enable eligible entities to carry out the activities specified in section 106(e), particularly with regard to mapping. Several commenters, including Form 477 broadband filers, support such disclosure of comprehensive data to eligible entities to carry out their mapping activities. Two associations of broadband providers expressly recognize that the disclosure should be tied to the speed thresholds used in the stimulus programs' definitions of ''unserved'' and ''underserved.'' We agree, but also recognize that the release of aggregate data should support the fuller set of responsibilities set forth in section 106(e), rather than just mapping.

16. Rather than adopt a single form of aggregation, we find that the creation of the complementary data sets described below would be the most useful approach for eligible entities. For each such data set, we identify below how we aggregate the data so as to help the eligible entities carry out their responsibilities without unduly risking exposure of confidential information. In adopting these data sets, we emphasize that nothing we do today modifies the Commission's definition of ''broadband,'' and that we reach these conclusions exclusively for the more narrow concerns of implementing section 106(h).

17. Subscriber-Count Data—Data Set 1: Number of Total Wireline, Terrestrial-Fixed Wireless and Satellite Broadband Subscribers per Census Tract, with Disaggregated Technology and Residential/Business Classification Data. With this data set, we will provide eligible entities with the total number of wireline, terrestrial-fixed wireless (TFW), and satellite ''broadband'' connections for each Census Tract in their state, broken down by technology and residential/business classification. We will aggregate all speed tiers above 768 kbps downstream and 200 kbps upstream, and will not supply provider names as part of this data set for any specific provider.

18. Providing access to this data set advances the activities of eligible entities in multiple ways. First, by showing actual subscribership in a Census Tract, the data set will assist eligible entities in verifying the availability data they collect, confirming their findings or alerting them to areas that may warrant further investigation. Additionally, numbers of the wireline and TFW residential subscribers could also be used to inform eligible entities' identification of ''underserved'' and ''unserved'' areas, as defined in the NTIA NOFA. Where an eligible entity determines, for example, that a tract has a level of household fixed subscription penetration of less than 10 percent, it could investigate and verify, based on availability data collected from providers, that the tract, as a whole or some portion thereof, is ''unserved.''

19. In addition, the technology and residential/business breakdowns in this data set should help eligible entities carry out their non-mapping functions in sections 106(e)(1)–(9) of the BDIA, specifically with regard to identifying problems and barriers unique to certain technologies or to the residential market. With regard to geographical granularity, due to the importance in both the statute and the NOFA of identifying those geographical areas that lack broadband availability, we decline to aggregate geographically any of the Census-Tract information that we collect on Form 477. We find that the Census Tract is the appropriate level of granularity to assist in identifying areas where broadband service is or is not available.

20. Subscriber-Count Data—Data Set 2: Total Number of Terrestrial Mobile Wireless Broadband Subscribers per State by Residential/Business Classification. For each state, we will provide the total number of terrestrial mobile wireless (TMW) ''broadband'' subscribers, broken out by business/residential classification, and will aggregate all provider data and all speed tiers above 768 kbps downstream and 200 kbps upstream. We will not supply individual provider identities as part of this data set. This is the most geographically granular TMW subscribership data we collect. This information complements the information in Data Set 1, and will similarly assist eligible entities in carrying out non-mapping functions under sections 106(e)(1)–(9) of the BDIA.

21. Provider Data—Data Set 3: List, by Census Tract, of Wireline, Satellite and Terrestrial-Fixed Wireless Providers, Reporting at Least One Broadband Subscriber, Disaggregated According to NTIA NOFA Speed Breakpoint for ''Underserved'' and by Residential/Business Classification. The Commission will provide, for each Census Tract, a list of all wireline, TFW and satellite providers reporting at least one ''broadband'' subscriber in the Census Tract. We will also provide data indicating whether or not each provider reported at least one connection above 3 Mbps downstream as well as whether they reported at least one business connection, at least one residential connection or both.

22. Access to this data set will provide eligible entities with a tool useful in identifying broadband providers and broadband service availability in their respective states. This data set will thus assist eligible entities in creating a geographic inventory map of broadband service, as contemplated by section 106(e)(10). In particular, this data set will allow eligible entities to identify providers for whom they do not have data and assess the availability of service in an area. This data set can also help providers carry out several other activities funded under section 106(e), including the identification and tracking of possible suppliers of broadband services to areas that have low levels of broadband service deployment.

23. This data set can also inform eligible entities' identification of ''underserved'' Census Tracts, since an area is underserved if ''ii) no fixed or mobile broadband service provider advertises broadband transmission speeds of at least three megabits per second ('mbps') downstream in the area.'' Specifically, where an eligible entity otherwise fails to find an advertised speed over 3 Mbps, the existence of a fixed subscriber at a tier above that speed would signal that further investigation is necessary, and the identity of the relevant provider would assist an eligible entity to locate any associated advertisement.

24. In determining whether and which speed tiers are appropriate to aggregate, we look to the NOFA's definition of ''broadband'' as being above 768 kpbs downstream, and its 3

Mpbs cutoff for downstream transmission speeds as part of its definition of ''underserved area.'' We conclude that aggregating the 72 tiers of combined upstream and downstream speeds into two speed tiers—between 768 kbps and 3 Mbps downstream, and above 3 Mbps downstream—comports with the statutory directive to aggregate, while preserving the distinctions that NTIA has deemed critical to carry out section 106(b) of the BDIA. While we agree with commenters that aggregation of speed tiers will shield particular provider's performance, we decline to adopt the differing proposed breakpoints that do not comport with these key NTIA definitions.

25. Provider Data—Data Set 4: List, by Census Tract, of Terrestrial-Mobile Wireless Broadband Providers Representing Service. The Commission will provide, for each Census Tract, a list of the TMW providers identifying the Census Tract as a part of their ''broadband'' service territory, along with data indicating whether or not they provide service at speeds above 3 Mbps. Similar to Data Set 3, this data set will assist in identifying the universe of TMW providers from whom eligible entities are seeking to collect availability data. The data set could also assist in the identification of ''underserved'' areas by providing an indication that service is available or may be advertised in an area. While a TMW provider's identification of those Census Tracts best representing its footprint is not necessarily indicative of ''access'' as defined in NTIA's NOFA, such information provides useful guidance for the eligible entity to follow up.

26. DSL and Cable-Modem Service Availability—Data Set 5: Percentages of Incumbent LEC DSL and Cable Modem Service Residential Availability. The Commission will provide percentages, by state, of residential end-user premises in incumbent LEC and cable provider service territories that have access to high-speed DSL and cable-modem services, disaggregated by technology. This dataset is the same as the percentages that are published as part of the High-Speed Services Report, although without any redaction. Again, these figures are based on providers' responses to questions about ''availability'' on Form 477 which may differ from NTIA's definition of ''access,'' but these data can be helpful to eligible entities in tracking down availability.

27. Confidentiality of Form 477 Data—Need for Protection. We turn now to the question of whether the Commission should seek to prevent inappropriate release of sensitive data, or whether it is more appropriate under the statute to release data to eligible entities and leave them to determine how to comply. We identify two issues of commercial sensitivity posed by the release of confidential data to an eligible entity: (1) An eligible entity's inadvertent disclosure of confidential Form 477 data to third parties potentially could cause competitive harm to the broadband provider that submitted the data to the Commission; and (2) where the eligible entity is itself a provider of broadband service, it could unfairly use these aggregated data in marketing its own services or planning its investment strategy. In this regard, we note the language of section 106(h)(2) requiring eligible entities to treat ''any matter that is a trade secret, commercial or financial information, or privileged or confidential, as a record not subject to public disclosure,'' unless providers expressly agree to such disclosure. This provision establishes important protections for the aggregated data that the Commission will provide. Even in aggregated form, however, the data will contain provider-specific information, which the Commission has historically protected and which may give rise to competitive sensitivities even in limited release. Accordingly, we find it appropriate to condition our release of the aggregate data by instituting the procedural mechanism described below.

28. We make clear at the outset that the affirmative steps we impose to safeguard confidentiality do not constitute a non-disclosure agreement (NDA), as some parties suggest. In contrast to an NDA that is a product of a contractual negotiation between two parties, we emphasize that we safeguard the limited release of our data through the issuance of a non-negotiated and non-negotiable order, and we require a certification from each eligible entity to several terms and conditions set forth below.

29. We decline to adopt the several alternative procedural vehicles that some commenters propose. For example, one provider suggests that the Commission require all eligible entities to abide by the safeguarding regimes that are at least as robust as the Commission's, and require all non-governmental eligible entities to sign an NDA that is mutually agreeable to the mapping entity and each broadband provider and afford providers rights to notice and objection to the publication or sharing of data. For reasons of administrability, efficiency, and fairness, we find that a uniform mechanism featuring streamlined reviews of a standardized declaration form and avoiding assessments of state disclosure laws or non-standard commitments will promote the timely processing of access requests and most effectively advance the goals of the BDIA.

30. Although we look to our past precedent for guidance on the necessary safeguards, we find that the more minimal set of conditions for release of the raw Form 477 data to state commissions set forth in the 2000 Data Gathering Order and NPRM, 65 FR 19675, are insufficient in this context for a variety of reasons, most notably the potential for misuse in a recipient's provision of its own broadband services. We also find that imposing a traditional protective order, such as those issued in recent merger and other adjudicatory proceedings, including the National Broadband Plan, would not be appropriately tailored to the instant proceeding. In particular, unlike those proceedings, the Form 477 data collection is mandatory for thousands of broadband providers, the list of entities eligible to gain access is enumerated by statute, and interested third parties have no right to review the data and use that information to participate in any Commission proceeding. Nevertheless, we respect the concerns identified by those commenters seeking the imposition of a protective order, and we find many of the terms and conditions of prior adjudicatory protective orders—particularly those adopted in the National Broadband Plan Protective Order—are instructive in crafting the safeguards we impose today.

31. Specific Safeguards. We conclude that the Chief of the WCB may provide electronic access to state-specific aggregate data collected on Form 477 to the eligible entity for each state, subject to the conditions set out below. We agree with commenters who identify the importance of protecting against inadvertent disclosure in transit, and direct the WCB Chief to exercise its discretion in establishing the medium for such electronic access and appropriate security measures, such as encryption and passwords. We therefore revise our delegation of authority to the WCB Chief consistent with the new regulations adopted by this Order.

32. Non-Disclosure of Aggregate Data. Consistent with the terms of BDIA section 106(h)(2) and the Commission's historical practice with regard to Form 477 data, we will condition our release of the aggregate data upon a commitment from each eligible entity that they will abide by the protections of section 106(h)(2) and will not disclose the aggregate data to any third

party except with the consent of the provider that submitted it. Additionally, we will require each eligible entity to execute and submit a Declaration (in the format attached as Appendix A to the preamble) containing an express commitment to protect the data in this fashion.

33. Procedures for Obtaining Access to Aggregate Data. In order to initiate its request for electronic access to aggregate data, each eligible entity seeking access shall execute the Declaration and file it with the Bureau via the Commission's Electronic Comment Filing System (ECFS) for this docket, and must also submit an electronic copy to the WCB Chief and the Chief of the Industry Analysis and Technology Division (IATD). We agree with the several commenters that emphasize the need for certifications from eligible entities as critical tools in keeping the aggregate data secure. We also find that making these certifications public by requiring them to be filed in this docket will enhance the transparency and accountability of this process, and that the standardized Declaration and the request process for eligible entities will lead to a more efficient administration of the processing of requests for access. For these administrative and efficiency reasons, we reject the proposals that the Commission review protections of state-instrumentality eligible entities individually.

34. Each prospective party seeking access must demonstrate that it qualifies as an eligible entity by submitting into ECFS documentation of the fact that it ''is the single eligible entity in the State that has been designated by the State to receive a grant under'' section 106(i)(2). NTIA has already established a procedure for identifying the designation of an eligible entity, and has published a list of eligible applicants for all 50 states, the five territories, and the District of Columbia. Although the Commission will make its own determinations of which entities qualify under section 106(i)(2), we find NTIA's Letter of Designation standard to be appropriate and administrable, and we adopt this standard here.

35. Use of Aggregate Data. Each eligible entity obtaining access under this Order must certify that it shall use the aggregate data only for the purposes of the section 106(b) State Broadband Data and Development Grant Program and, except as provided herein, shall not use such documents or information for any other purpose, including without limitation, business, governmental, or commercial purposes, or in other administrative, regulatory or judicial proceedings. We agree with those filers that assert that eligible entities should not be permitted to use data received pursuant to the BDIA to enhance their own efforts to compete against Form 477 filers, or to provide data to entities that are direct or even indirect competitors. These restrictions are necessary to prevent an eligible entity's right to access aggregate data from becoming an unfair, anticompetitive tool in its own provision of broadband service.

36. Numerous commenters express concerns about grantee publication of confidential, provider-specific Form 477 data, and several propose different mechanisms for the Commission to deem confidential all or part of those data prior to sharing them with the grantee, including a review for confidential information by the Commission of grantee broadband maps and appropriate redaction. We recognize the legitimacy of these concerns. Rather than undertaking any case-by-case review of maps or data, however, we specifically prohibit any eligible entity, contractor, or other party from publishing, sharing or otherwise disseminating Form 477 aggregate data or further aggregation of these aggregate data, including maps designating broadband subscription based on Form 477 aggregate data, as well as penetration or other indicators derived from subscription. We view this approach as administratively efficient and as an effective safeguard, and consistent with the goal of the BDIA and the NTIA NOFA—to award grants for eligible entities to track availability, not to republish information supplied to them by the Commission. We are aware of the utility that the Form 477 broadband subscribership data has to states, providers, and the public, and to the extent possible, we will publish those data in our High-Speed Services Reports and miscellaneous reports.

37. Permissible Disclosure. We limit access to aggregate data to certain personnel. NTIA expressly anticipates that awardees may use contractors and subcontractors, including for-profit companies, and we devise our disclosure rules to be consistent with that relationship. At least one commenter has recognized, however, that use restrictions should extend to third parties, and we agree that avoiding potential conflicts of interest—as well the appearance of such conflicts—warrant certain measures. Accordingly, subject to the use description described above, we specifically limit access to aggregate data to (1) principals or employees of the eligible entity; (2) outside contractors, subcontractors, consultants or experts retained for the purpose of assisting eligible entities, provided that such outside consultants are not employees of or consultants or contractors to any broadband service provider in the relevant state, and do not otherwise participate directly in the business decisions of any broadband service provider in the state nor the analysis underlying the business decisions; and (3) outside counsel to eligible entities, provided that such persons are not involved in competitive decision-making, i.e., outside counsel's activities, association, and relationship with any broadband service provider in the relevant state do not involve advice about or participation in the business decisions of that provider nor the analysis underlying the business decisions. We find this protective measure necessary to ensure against anticompetitive misuse.

38. Protection of Aggregate Data. Persons described in paragraphs 33 and 37 shall have the obligation to ensure that access to aggregate data is strictly limited as prescribed in this Order. We agree with those commenters who seek strengthened safeguards to preserve confidentially, and agree with the proposal of some commenters that eligible entities should be required to implement reasonable internal data protection policies, such as employee training and security of storage. Furthermore, each eligible entity must work with the encryption, password-protection, designation-of-confidentiality, or other security measures that the Commission may attach to the aggregate data or the electronic access to those data, and may not remove, alter, or otherwise adjust any such security feature. We adopt similar file protections as those adopted in the National Broadband Plan Protective Order, as set forth below, although in this docket we expressly allow WCB to transmit information electronically, consistent with the BDIA's requirement to provide access in electronic form.

39. In order to receive a password to access directly the state-specific aggregate data, an eligible entity will submit, via the Commission's Electronic Comment Filing System, a Declaration, consistent with Appendix A, signed by a corporate officer, director, managing partner or equivalent official of the eligible entity. Upon receipt of a properly executed Declaration, the Wireline Competition Bureau will supply the Declarant with a password for access. Other individuals may then access the aggregate data consistent with the terms of this Order, although at all times the eligible entity and Declarant assume full responsibility for

compliance with all terms and conditions of this Order. The Declarant must maintain a list of the names and titles of all employees, contractors, and others who access these aggregate data, and must produce this list to the Commission upon request.

40. A person in receipt of aggregate data in electronic format shall load the information onto a computer solely for the purpose of analysis in connection with this proceeding and for no other purpose.

41. Once loaded onto a computer, the files containing aggregate data shall be password protected immediately. The aggregate data may not be stored on a computer after being analyzed. Consequently, aggregate data should not be stored in computer memory that is copied, such as to a network's back-up or archival storage. After the analysis is complete, the results of such analysis may be stored by saving the results (but not the underlying aggregate data) to a mobile data storage medium. All files containing aggregate data shall, as soon as practicable, be deleted from the computer.

42. Subpoena by Courts, Departments or Agencies. If a court, or a federal or state department or agency issues a subpoena or orders production of aggregate data that an eligible entity has obtained under terms of this Order, the eligible entity shall promptly notify the WCB Chief of the pendency of such subpoena or order. Consistent with the independent authority of any court, department or agency, such notification must be accomplished such that the Commission has a full opportunity to oppose such production prior to the production or disclosure of any aggregate data.

43. Violations of Order. Should a person that has properly obtained access to aggregate data under this Protective Order violate any of its terms, that person shall immediately convey that fact to the Commission, including the WCB Chief. Further, should such violation consist of improper disclosure of aggregate data, the violating person shall take all necessary steps to remedy the improper disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Order, including but not limited to suspension or disbarment of Counsel from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to aggregate data.

44. Several commenting parties urge the Commission to recognize a right to recovery by providers against eligible entities. We decline at this time to address this issue, but we do make clear that nothing in this Order shall limit any other rights and remedies available to a provider that has submitted underlying Form 477 data at law or in equity against any person using aggregated data in a manner not authorized by this Order.

45. Adequacy of Notice. We reject the argument raised by one commenter that the Aggregate Data Notice is inadequate to implement section 106(h), and that a new rulemaking proceeding is necessary in order to adopt new Form 477 data distribution rules. That commenter contends that rural broadband service providers may have ''inadvertently'' submitted confidential information that they would not have otherwise disclosed, and therefore ''fairness'' and due process dictates that the Commission should not apply section 106(h) retrospectively to data that have already been collected. We disagree for several reasons. First, the mandatory nature of Form 477 negates the argument that any broadband provider may somehow have not included certain information that is required from all facilities-based broadband providers. Second, the breadth of the current pending 2008 Broadband Data Gathering Further Notice and the Aggregate Data Public Notice provide more than enough opportunity for filers to provide meaningful comment on the rule change that we make today. Third, the combination of aggregation and the confidentiality protections described above provide ample protection for the confidential data.

Congressional Review Act

46. The Commission will send a copy of this Order in a report to be sent to Congress and the Government Accountability Office, pursuant to the Congressional Review Act.

Paperwork Reduction Act

47. This Order contains no new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13.

Final Regulatory Flexibility Analysis

48. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that ''the rule will not have a significant economic impact on a substantial number of small entities.'' The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

49. This Order takes steps to provide for the sharing of Form 477 data with other entities. Our rule imposes no burden on Form 477 filers or on the eligible entities. Therefore, we certify that the requirements of this Order will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the Order including a copy of this final certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Order and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**. *See* 5 U.S.C. 605(b).

Ordering Clauses

50. Accordingly, *it is ordered* that pursuant to sections 4(i), 4(j), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 403, and sections 101–06 of the Broadband Data Improvement Act, 47 U.S.C. 1301–04, this Order *is adopted,* effective upon its release.

51. *It is further ordered* that this Order *shall be effective* 30 days after date of publication in the **Federal Register**.

52. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

53. *It is further ordered* that the Commission *shall send* a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Appendix A to the Preamble

Declaration

In the Matter of	
Providing Eligible Entities Access to Aggregate Form 477 Data	WC Docket No. 07–38
Implementation of the Broadband Data Improvement Act of 2008	GN Docket No. 09–47
A National Broadband Plan for our Future	GN Docket No. 09–51

I, _____, of the eligible entity ____

for the state of _____, hereby declare under penalty of perjury that I have read the Order that has been entered by the Commission in this proceeding, and I understand it.

I agree to be bound by its terms pertaining to the treatment of section 106(h) aggregate data, and I agree that I shall not disclose or use section 106(h) aggregate data except as allowed by the Order.

I certify that I have verified that there are in place procedures at my place of business where the data is accessed to prevent unauthorized disclosure of section 106(h) aggregate data.

I acknowledge that a violation of the Order is a violation of an order of the Federal Communications Commission.

Executed at _____ this __ day of _____.

[signed]

_____

[Name]

_____

[Position]

_____

[Eligible Entity]

_____

[Address]

_____

[Telephone]

_____

[Email]

_____

List of Subjects in 47 CFR Part 1

Broadband, Communications, Eligible entities, Intergovernmental relations, and Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.;* 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r), and 309, Cable Landing License Act of 1921, 47 U.S.C. 35–39, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96.

■ 2. Section 1.7001 is amended by revising paragraph (d) to read as follows:

§ 1.7001 Scope and content of filed reports.

* * * * *

(d) Respondents may make requests for Commission non-disclosure of provider-specific data contained in FCC Form 477 under § 0.459 of this chapter by so indicating on Form 477 at the time that the subject data are submitted. The Commission shall make all decisions regarding non-disclosure of provider-specific information, except that:

(1) The Chief of the Wireline Competition Bureau may release provider-specific information to a state commission provided that the state commission has protections in place that would preclude disclosure of any confidential information, and

(2) The Chief of the Wireline Competition Bureau may release provider-specific information to ''eligible entities,'' as those entities are defined in the Broadband Data Improvement Act, in an aggregated format and pursuant to confidentiality conditions prescribed by the Commission.

* * * * *

[FR Doc. 2013–17928 Filed 7–26–13; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 78, No. 145
Monday, July 29, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0661; Directorate Identifier 2013–CE–009–AD]

RIN 2120–AA64

Airworthiness Directives; Schempp-Hirth Flugzeugbau GmbH Gliders

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Schempp-Hirth Flugzeugbau GmbH Model Duo Discus T gliders. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as the instructions provided to inspect the propeller hub and blades are insufficient for detecting cracks and/or other damage, and other operating instructions provided by the flight and maintenance manual are incorrect and insufficient. We are issuing this proposed AD to require actions to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by September 12, 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 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Schempp-Hirth Flugzeugbau GmbH, Krebenstrasse 25, 73230 Kirchheim/Teck, Germany; telephone: +49 7021 7298–0; fax: +49 7021 7298–199; email: *info@schempp-hirth.com;* Internet: *http://www.schempp-hirth.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the MCAI, the regulatory evaluation, any comments received, and other information. The street address for the Docket 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: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov.*

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–2013–0661; Directorate Identifier 2013–CE–009–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No.: 2013–0054, dated March 5, 2013 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> It was found that the accomplishment instructions provided to check the powered sailplane's propeller hub and blades were not sufficient to detect cracks and/or other damage. The results of a subsequent manual review revealed that some other operating instructions provided by the sailplane flight and maintenance manual were neither correct nor sufficient.
>
> This condition, if not corrected, could lead to operation of the powered sailplane outside its certified limits.
>
> To address this unsafe condition, EASA issued AD 2013–0012 to require amendment of sailplane flight- and maintenance manuals to correct the operating instruction deficiencies and inaccuracies and, for Arcus T sailplanes that had been repaired before the applicable maintenance manual update, an elevator or wing flap hinge moment weight check, as applicable.
>
> Since that AD was published, Schempp-Hirth Flugzeugbau GmbH determined that Action 3 of the accomplishment instructions of Technical Note (Technische Mitteilung) (TN) 890–13, referenced for Duo Discus T sailplanes, was incorrect for S/N 1 through 174. To correct this erroneous maintenance instruction, Schempp-Hirth Flugzeugbau GmbH issued TN 890–13 issue 2.
>
> For the reasons described above, this AD retains the requirements of EASA AD 2013–0012, which is superseded, and requires, for certain Duo Discus T powered sailplanes, the use of instructions as provided in TN 890–13 issue 2.

The MCAI requires exchange of flight manual pages (which introduces a repetitive inspection of the power plant), exchange of maintenance manual pages, exchange of cockpit placards, and transfer of weight and balance data. EASA AD No.: 2013–0054 supersedes EASA AD No. 2013–0012, dated January 15, 2013. No FAA action was taken on EASA AD No. 2013–0012. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Schempp-Hirth Flugzeugbau GmbH has issued Technical Note No. 890–13, 2nd issue, dated March 5, 2013, for all the affected serial numbers; Duo Discus T Flight Manual TN 890–13, Revision 12, dated November 2011, for serial numbers (S/N) 1 through 174; and Duo Discus T Flight Manual TN 890–13, Revision 2, dated November 2011, for S/N 175 through 240. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the 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 this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD will affect 5 products of U.S. registry. We also estimate that it would take about 2.5 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $50 per product.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $1,312.50, or $262.50 per product.

In addition, we estimate that any necessary follow-on actions (replace any parts found with cracks and repair any damage) would take about 5 work-hours and require parts costing $3,840, for a cost of $4,265 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Schempp-Hirth Flugzeugbau GmbH: Docket No. FAA–2013–0661; Directorate Identifier 2013–CE–009–AD.

(a) Comments Due Date

We must receive comments by September 12, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Schempp-Hirth Flugzeugbau GmbH Model Duo Discus T gliders, serial numbers (S/N) 1 through 240, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 5: Time Limits.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as the instructions provided to inspect the propeller hub and blades are insufficient for detecting cracks and/or other damage, and other operating instructions provided by the flight and maintenance manual are incorrect and insufficient. We are issuing this AD to ensure that the instructions for inspecting the propeller hub and blades are sufficient to detect cracks and/or other damage and instructions of the flight and maintenance manual are correct and sufficient.

(f) Actions and Compliance

Unless already done, do the following actions as specified in paragraphs (f)(1) through (f)(4) of this AD:

(1) Within 30 days after the effective date of this AD, incorporate amended pages into the applicable FAA-approved sailplane flight manual (SFM), following Action 1 of Schempp-Hirth Flugzeugbau GmbH Technical Note No. 890–13, 2nd issue, dated March 5, 2013.

(2) Within 60 days after the effective date of this AD, do the following actions in paragraphs (f)(2)(i), (f)(2)(ii), and (f)(2)(iii) of this AD:

(i) Incorporate amended pages into the applicable FAA-approved SFM and sailplane maintenance manual (SMM), as applicable, following Action 2 and Action 3 of Schempp-Hirth Flugzeugbau GmbH Technical Note No. 890–13, 2nd issue, dated March 5, 2013.

(ii) Install the amended cockpit placards following Action 4 of Schempp-Hirth Flugzeugbau GmbH Technical Note No. 890–13, 2nd issue, dated March 5, 2013. Replace previous placard as necessary.

(iii) Transfer weight and balance data from weight and balance report into the weight and balance log sheet following Action 5 of Schempp-Hirth Flugzeugbau GmbH Technical Note No. 890–13, 2nd issue, dated March 5, 2013.

(3) The actions required by paragraph (f)(1) of this AD may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD following 14 CFR § 43.9 (a)(1)–(4) and 14 CFR § 91.417(a)(2)(v). The record must be maintained as required by 14 CFR § 91.417, 121.380, or 135.439.

(4) Initially within 30 days after the effective date of this AD and repetitively thereafter at intervals not to exceed 12 calendar months, visually inspect (pre-flight) the power plant (propeller hub and propeller blades) for cracks or other damage following:

(i) *S/N 1 through 174:* the *Visual inspection of the power plant* section, page 4.3.3, step (4) c), of Schempp-Hirth Flugzeugbau GmbH Duo Discus T Flight Manual TN 890–13, Revision 12, dated November 2011; or

(ii) *S/N 175 through 240:* the *Visual inspection of the power plant* section, page 4.3.3, step (4) c), of Schempp-Hirth Flugzeugbau GmbH Duo Discus T Flight Manual TN 890–13, Revision 2, dated November 2011.

(5) If any cracks or other damage is found during any inspection required by paragraph (f)(4) of this AD, before further flight, replace any parts found with cracks and repair any damage.

Note 1 to paragraph (f) of this AD: This AD and the MCAI incorporate SFM revisions that call out daily pilot inspections of the power plant (propeller hub and propeller blades). The FAA is also requiring in this AD initial and annual repetitive inspections by a properly certificated aircraft mechanic.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(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.

(h) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2013–0054, dated March 5, 2013 which can be found in the AD docket on the Internet at *http://www.regulations.gov;* and Schempp-Hirth Flugzeugbau GmbH Duo Discus T Maintenance Manual TN 890–13, Revision 16, dated November 2011, for S/N 1 through 174; and Schempp-Hirth Flugzeugbau GmbH Duo Discus T Maintenance Manual TN 890–13, Revision 3, dated November 2011, for S/N 175 through 240, which can be obtained from the manufacturer specified in the next sentence. For service information related to this AD, contact Schempp-Hirth Flugzeugbau GmbH, Krebenstrasse 25, 73230 Kirchheim/Teck, Germany; telephone: +49 7021 7298–0; fax: +49 7021 7298–199; email: *info@schempp-hirth.com;* Internet: *http://www.schempp-hirth.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on July 23, 2013.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–18092 Filed 7–26–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

Docket No. FAA–2013–0600; Airspace Docket No. 13–ANM–18

Proposed Amendment of Class E Airspace; St. George, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at St. George Municipal Airport, St. George, UT, by removing the operating hours established by a Notice to Airmen (NOTAM) due to the airport changing from a part time to a full time facility. The FAA is proposing this action to enhance the safety and management of aircraft operations at St. George Municipal Airport, St. George, UT.

DATES: Comments must be received on or before September 12, 2013.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2013–0600; Airspace Docket No. 13–ANM–18, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2013–0600 and Airspace Docket No. 13–ANM–18) and be submitted in triplicate to the Docket Management System (see ''**ADDRESSES**'' section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2013–0600 and Airspace Docket No. 13–ANM–18''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the ''**ADDRESSES**'' section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory

Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E surface airspace at St. George Municipal Airport, St. George, UT. Due to increased air traffic, controlled airspace would be continuous 24 hours, and no longer would be effective during the specific dates and times established in advance by NOTAM. The boundaries of the controlled airspace area would remain the same. This action would enhance the safety and management of aircraft operations at St. George Municipal Airport, St. George, UT.

Class E airspace designations are published in paragraph 6002, of FAA Order 7400.9W, dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend controlled airspace at St. George Municipal Airport, St. George, UT.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR Part 71.1 of the Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012 is amended as follows:

Paragraph 6002 Class E airspace Designated as Surface Areas.

* * * * *

ANM UT E2 St. George, UT [Amended]

St. George Municipal Airport, UT
(Lat. 37°02′11″ N., long. 113°30′37″ W.)
Within a 4.5-mile radius of St. George Municipal Airport.

Issued in Seattle, Washington, on July 22, 2013.

Christopher Ramirez,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2013–18139 Filed 7–26–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0532; Airspace Docket No. 13–ANM–21]

Proposed Establishment of Class E Airspace; Cut Bank, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at the Cut Bank VHF Omni-Directional Radio Range Tactical Air Navigational Aid (VORTAC) navigation aid, Cut Bank, MT, to facilitate vectoring of Instrument Flight Rules (IFR) aircraft under control of Salt Lake City and Seattle Air Route Traffic Control Centers (ARTCCs). The FAA is proposing this action to enhance the safety and management of aircraft operations within the National Airspace System.

DATES: Comments must be received on or before September 12, 2013.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2013–0532; Airspace Docket No. 13–ANM–21, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2013–0532 and Airspace Docket No. 13–ANM–21) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2013–0532 and

Airspace Docket No. 13–ANM–21.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E en route domestic airspace extending upward from 1,200 feet above the surface at the Cut Bank VORTAC navigation aid, Cut Bank, MT. This action would contain aircraft while in IFR conditions under control of Salt Lake City and Seattle ARTCCs by vectoring aircraft from en route airspace to terminal areas.

Class E airspace designations are published in paragraph 6006, of FAA Order 7400.9W, dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would establish controlled airspace at the Cut Bank VORTAC, Cut Bank, MT.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012 is amended as follows:

Paragraph 6006 En route domestic airspace areas.

* * * * *

ANM MT E6 Cut Bank, MT [New]

Cut Bank VORTAC, MT
(Lat. 48°33′54″ N., long. 112°20′36″ W.)

That airspace extending upward from 1,200 feet above the surface within an area bounded by lat. 49°00′00″ N., long. 109°11′00″ W.; to lat. 46°54′00″ N., long. 108°49′30″ W.; to lat. 45°56′15″ N., long. 110°00′00″ W.; to lat. 46°23′22″ N., long. 110°30′00″ W.; to lat. 47°10′40″ N., long. 109°52′06″ W.; to lat. 47°59′55″ N., long. 110°30′00″ W.; to lat. 48°12′20″ N., long. 111°00′10″ W.; to lat. 48°15′45″ N., long. 111°33′50″ W.; to lat. 48°03′50″ N., long. 112°14′45″ W.; to lat. 47°41′18″ N., long. 112°36′32″ W.; to lat. 47°53′10″ N., long. 113°35′00″ W.; to lat. 48°25′00″ N., long. 113°35′21″ W.; to lat. 48°24′00″ N., long. 115°44′57″ W.; to lat. 49°00′00″ N., long. 115°30′00″ W.; to lat. 49°00′00″ N., long. 114°40′00″ W.; to lat. 49°00′00″ N., long. 114°00′00″ W.; to lat. 49°00′00″ N., long. 113°00′00″ W.; to lat. 49°00′00″ N., long. 112°00′00″ W.; to lat. 49°00′00″ N., long. 111°00′00″ W.; to lat. 49°00′00″ N., long. 110°00′00″ W., thence to the point of beginning.

Issued in Seattle, Washington, on July 22, 2013.

Christopher Ramirez,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2013–18138 Filed 7–26–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0533; Airspace Docket No. 13–ANM–19]

Proposed Establishment of Class E Airspace; Rome, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at the Rome VHF Omni-Directional Radio Range/

Distance Measuring Equipment (VOR/DME) navigation aid, Rome, OR, to facilitate vectoring of Instrument Flight Rules (IFR) aircraft under control of Salt Lake City, Oakland and Seattle Air Route Traffic Control Centers (ARTCCs). The FAA is proposing this action to enhance the safety and management of aircraft operations within the National Airspace System.

DATES: Comments must be received on or before September 12, 2013.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2013–0533; Airspace Docket No. 13–ANM–19, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2013–0533 and Airspace Docket No. 13–ANM–19) and be submitted in triplicate to the Docket Management System (see ''**ADDRESSES**'' section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2013–0533 and Airspace Docket No. 13–ANM–19''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the ''**ADDRESSES**'' section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E en route domestic airspace extending upward from 1,200 feet above the surface at the Rome VOR/DME navigation aid, Rome, OR. This action would contain aircraft while in IFR conditions under control of Salt Lake City, Oakland and Seattle ARTCCs by vectoring aircraft from en route airspace to terminal areas.

Class E airspace designations are published in paragraph 6006, of FAA Order 7400.9W, dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish controlled airspace at the Rome VOR/DME, Rome, OR.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR Part 71.1 of the Federal Aviation

Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012 is amended as follows:

Paragraph 6006 En Route Domestic Airspace Areas.

* * * * *

ANM OR E6 Rome, OR [New]

Rome VOR/DME, OR
(Lat. 42°35′26″ N., long. 117°52′05″ W.)

That airspace extending upward from 1,200 feet above the surface within an area bounded by lat. 45°50′06″ N., long. 117°05′33″ W.; to lat. 45°13′00″ N., long. 117°05′42″ W.; to lat. 45°07′42″ N., long. 116°18′03″ W.; to lat. 44°15′42″ N., long. 116°19′34″ W.; to lat. 44°03′18″ N., long. 117°05′05″ W.; to lat. 43°07′42″ N., long. 116°44′08″ W.; to lat. 42°25′53″ N., long. 116°03′43″ W.; to lat. 42°26′27″ N., long. 114°57′44″ W.; to lat. 42°00′00″ N., long. 114°42′42″ W.; to lat. 41°08′22″ N., long. 114°57′44″ W.; to lat. 40°04′38″ N., long. 118°49′42″ W.; to lat. 40°45′47″ N., long. 120°14′45″ W.; to lat. 42°39′54″ N., long. 119°42′02″ W.; to lat. 43°41′51″ N., long. 120°00′19″ W.; to lat. 45°09′13″ N., long. 119°01′43″ W.; to lat. 45°49′52″ N., long. 118°02′34″ W., thence to the point of beginning.

Issued in Seattle, Washington, on July 22, 2013.

Christopher Ramirez,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2013–18144 Filed 7–26–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0516; Airspace Docket No. 13–AAL–2]

Proposed Establishment of Class E Airspace; Akutan, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Akutan Airport, Akutan, AK. Controlled airspace is necessary to accommodate aircraft using the new Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at the airport. The FAA is proposing this action to enhance the safety and management of aircraft operations at the airport.

DATES: Comments must be received on or before September 12, 2013.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2013–0516; Airspace Docket No. 13–AAL–2, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Richard Roberts, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4517.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2013–0516 and Airspace Docket No. 13–AAL–2) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2013–0516 and Airspace Docket No. 13–AAL–2''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace extending upward from 700 feet above the surface within a 3.5-mile radius of Akutan Airport, Akutan, AK, with a segment extending from the 3.5-mile radius to 5.5 miles northwest of the airport. Controlled airspace is needed to accommodate aircraft using the new RNAV (GPS) standard instrument approaches and departures at the airport. This action would enhance the safety and management of aircraft operations at the airport.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9W, dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44

FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle I, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would modify controlled airspace at Akutan Airport, Akutan, AK.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012 is amended as follows:

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

* * * * *

AAL AK E5 Akutan, AK [New]

Akutan Airport, AK
(Lat. 54°08′41″ N., long. 165°36′15″ W.)

That airspace extending upward from 700 feet above the surface within a 3.5-mile radius of the Akutan Airport and within 1-mile each side of the 311° bearing extending from the 3.5-mile radius to 5.5-miles northwest of the airport.

Issued in Seattle, Washington, on July 22, 2013.

Christopher Ramirez,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2013–18142 Filed 7–26–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0531; Airspace Docket No. 13–ANM–20]

Proposed Establishment of Class E Airspace; Salmon, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at the Salmon VHF Omni-Directional Radio Range/Distance Measuring Equipment (VOR/DME) navigation aid, Salmon, ID, to facilitate vectoring of Instrument Flight Rules (IFR) aircraft under control of Salt Lake City and Seattle Air Route Traffic Control Centers (ARTCCs). The FAA is proposing this action to enhance the safety and management of aircraft operations within the National Airspace System.

DATES: Comments must be received on or before September 12, 2013.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2013–0531; Airspace Docket No. 13–ANM–20, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2013–0531 and Airspace Docket No. 13–ANM–20) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2013–0531 and Airspace Docket No. 13–ANM–20.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and

5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E en route domestic airspace extending upward from 1,200 feet above the surface at the Salmon VOR/DME navigation aid, Salmon, ID. This action would contain aircraft while in IFR conditions under control of Salt Lake City and Seattle ARTCCs by vectoring aircraft from en route airspace to terminal areas.

Class E airspace designations are published in paragraph 6006, of FAA Order 7400.9W, dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle I, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would establish controlled airspace at the Salmon VOR/DME, Salmon, ID.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012 is amended as follows:

Paragraph 6006 En route domestic airspace areas.

* * * * *

ANM ID E6 Salmon, ID [New]

Salmon VOR/DME, ID
(Lat. 45°01′17″ N., long. 114°05′03″ W.)

That airspace extending upward from 1,200 feet above the surface within an area bounded by lat. 45°50′06″ N., long. 117°05′33″ W.; to lat. 45°50′00″ N., long. 115°45′00″ W.; to lat. 46°40′00″ N., long. 115°45′00″ W.; to lat. 46°40′00″ N., long. 115°00′00″ W.; to lat. 46°02′00″ N., long. 115°00′00″ W.; to lat. 46°02′00″ N., long. 113°20′00″ W.; to lat. 45°51′00″ N., long. 113°07′00″ W.; to lat. 45°35′00″ N., long. 113°25′00″ W.; to lat. 45°01′02″ N., long. 113°30′00″ W.; to lat. 44°44′30″ N., long. 113°13′20″ W.; to lat. 44°38′18″ N., long. 112°58′48″ W.; to lat. 44°34′31″ N., long. 112°25′54″ W.; to lat. 44°41′00″ N., long. 111°59′20″ W.; to lat. 44°39′25″ N., long. 111°52′32″ W.; to lat. 44°19′00″ N., long. 112°04′36″ W.; to lat. 43°34′55″ N., long. 112°29′22″ W.; to lat. 42°57′33″ N., long. 113°32′27″ W.; to lat. 43°00′00″ N., long. 113°52′20″ W.; to lat. 43°57′38″ N., long. 113°56′09″ W.; to lat. 43°57′53″ N., long. 114°51′05″ W.; to lat. 43°05′36″ N., long. 114°51′26″ W.; to lat. 43°03′38″ N., long. 115°19′32″ W.; to lat. 43°17′24″ N., long. 115°41′05″ W.; to lat. 43°30′14″ N., long. 115°36′38″ W.; to lat. 43°47′52″ N., long. 115°41′21″ W.; to lat. 43°58′04″ N., long. 115°51′09″ W.; to lat. 44°03′41″ N., long. 116°12′15″ W.; to lat. 44°15′42″ N., long. 116°19′34″ W.; to lat. 45°07′42″ N., long. 116°18′03″ W.; to lat. 45°13′00″ N., long. 117°05′42″ W., thence to the point of beginning.

Issued in Seattle, Washington, on July 22, 2013.

Christopher Ramirez,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2013–18147 Filed 7–26–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM13–11–000]

Frequency Response and Frequency Bias Setting Reliability Standard

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes to approve Reliability Standard BAL–003–1 (Frequency Response and Frequency Bias Setting), submitted by the North American Electric Reliability Corporation, the Commission-certified Electric Reliability Organization. The proposed Reliability Standard defines the necessary amount of frequency response needed for reliable operations for each Balancing Authority within an Interconnection.

DATES: Comments are due September 27, 2013.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways:

- Electronic Filing through *http://www.ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- *Mail/Hand Delivery:* Those unable to file electronically may mail or hand-deliver comments to: Federal Energy Regulatory Commission, Secretary of the

Commission, 888 First Street NE., Washington, DC 20426.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Notice of Proposed Rulemaking

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144 FERC ¶ 61,057

1. Pursuant to section 215(d) of the Federal Power Act (FPA),[1] the Commission proposes to approve Reliability Standard BAL–003–1 (Frequency Response and Frequency Bias Setting), submitted by the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO). The proposed Reliability Standard includes requirements pertaining to the measurement and provision of frequency response.[2] NERC's proposal addresses a gap in reliability as well as directives on the matter from Order No. 693.[3] While the Commission proposes to approve proposed Reliability Standard BAL–003–1, the Commission also has concerns about certain provisions of the proposed Reliability Standard and, therefore, proposes that NERC submit a report and develop modifications to address the identified concerns. The Commission also proposes to approve four proposed new or revised definitions to the NERC Glossary, NERC's implementation plan, most proposed violation risk factors and violation severity levels, and NERC's proposed retirement of currently effective Reliability Standard BAL–003–0.1b.[4]

2. Frequency response is a measure of an Interconnection's ability to stabilize frequency immediately following the sudden loss of generation or load, and is a critical component of the reliable operation of the Bulk-Power System, particularly during disturbances and recoveries. Frequency response is predominately provided by the automatic and autonomous actions of turbine-governors with some response being provided by changes in demand due to changes in frequency. Failure to maintain frequency can disrupt the operation of equipment and initiate disconnection of power plant equipment to prevent it from being damaged, which could lead to wide-spread blackouts.

3. The proposed Reliability Standard establishes a minimum Frequency Response Obligation[5] for each Balancing Authority, provides a uniform calculation of frequency response, establishes Frequency Bias Settings that establish values closer to actual Balancing Authority frequency response, and encourages coordinated automatic generation control (AGC) operation.[6] These matters are not addressed in any currently-effective Reliability Standard. Because the proposed Reliability Standard addresses a gap in reliability, as well as certain directives from Order No. 693, we

[1] 16 U.S.C. 824o (2006).

[2] NERC defines ''frequency response'' in the NERC Glossary of Terms Used in Reliability Standards (Glossary) as follows:

Equipment: The ability of a system or elements of the system to react or respond to a change in system frequency. *System:* The sum of the change in demand, plus the change in generation, divided by the change in frequency, expressed in megawatts per 0.1 Hertz (MW/0.1 Hz).

[3] *See Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, FERC Stats. & Regs. ¶ 31,242, at P 375, *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007).

[4] The Commission proposes to approve BAL–003–1 as it applies to the ERCOT Interconnection and the United States portions of the Eastern and Western Interconnections. The Commission proposes to take no action as BAL–003–1 applies to the Quebec Interconnection.

[5] NERC proposes to define Frequency Response Obligation as ''[t]he Balancing Authority's share of the required Frequency Response needed for the reliable operation of an Interconnection. This will be calculated as MW/0.1Hz.''

[6] NERC proposes to revise the definition of Frequency Bias Setting as ''[a] number, either fixed or variable, usually expressed in MW/0.1 Hz, included in a Balancing Authority's Area Control Error equation to account for the Balancing Authority's inverse Frequency Response contribution to the Interconnection, and discourage response withdrawal through secondary control systems.''

propose to approve the proposed Reliability Standard BAL–003–1.

4. While we propose to approve BAL–003–1, we also have concerns regarding certain provisions of the proposed standard, some of which NERC itself identifies in the reports included in its petition. We discuss below our specific concerns regarding: (1) Requirement R1, the calculation of Frequency Response Measure by using the median statistical method, i.e., selecting the middle value in a set of data that is arranged in an ascending or descending order; [7] (2) the potential for early withdrawal of primary frequency response before secondary frequency response, i.e., automatic generation control, is activated; (3) the need to study frequency response during low-load conditions; (4) appropriate identification of resource contingency criteria in the Western Interconnection; and (5) the need to adequately ensure that each Balancing Authority has available the resources it needs to meet its frequency response obligation. With regard to these concerns, the Commission seeks comments, and in some cases proposes that NERC develop modifications, conduct additional studies and/or submit a report to the Commission, as discussed below.

5. Frequency response, while a highly technical matter, is one fundamental measure of the reliability and robustness of the Bulk-Power System. It is incumbent on the Commission, the ERO, Balancing Authorities and, ultimately frequency response resources, to ensure that frequency response is timely and adequately provided, as well as accurately measured. Thus, we propose to approve proposed Reliability Standard BAL–003–1, but also propose to direct future development to address certain provisions that will better enable accurate measurement of delivered frequency response and ensure availability of adequate frequency response on the Bulk-Power System.

I. Background

A. Section 215 of the FPA

6. Section 215 of the FPA requires the Commission-certified ERO to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval. Once approved, the Reliability Standards may be enforced by the ERO subject to the Commission's oversight, or by the Commission independently.[8] Pursuant to the requirements of FPA section 215, the Commission established a process to select and certify an ERO,[9] and subsequently certified NERC as the ERO.[10]

B. Procedural History

7. On March 16, 2007, in Order No. 693, the Commission approved 83 of 107 proposed Reliability Standards pursuant to FPA section 215(d), including currently-effective BAL–003–0. In addition, pursuant to section 215(d)(5) of the FPA, the Commission directed NERC, among other things, to develop modifications to BAL–003–0 to address certain issues identified by the Commission. Specifically, the Commission directed NERC to:

> Develop a modification to BAL–003–0 through the Reliability Standards development process that: (1) Includes Levels of Non-Compliance; (2) determines the appropriate periodicity of frequency response surveys necessary to ensure that Requirement R2 and other requirements of the Reliability Standard are being met, and to modify Measure M1 based on that determination; and (3) defines the necessary amount of Frequency Response needed for Reliable Operation for each balancing authority with methods of obtaining and measuring that the frequency response is achieved.[11]

8. On March 18, 2010, the Commission established a six month compliance deadline for NERC to submit modifications to Reliability Standard BAL–003–0 responsive to the Commission's directives in Order No. 693.[12] NERC requested rehearing and clarification. On rehearing for further consideration, the Commission directed Commission staff to convene a technical conference to provide an opportunity for a public discussion regarding technical issues pertaining to the development of a frequency response requirement.[13] The Commission also directed NERC to submit a proposed schedule that includes firm deadlines for completing studies and analyses needed to develop a frequency response requirement, and for submission of a modified BAL–003–0 Reliability Standard responsive to the Commission directives in Order No. 693.

9. On October 25, 2010, NERC submitted an action plan and estimated timelines for completing studies and analyses needed to develop a frequency response requirement. NERC indicated that it would complete the revised Reliability Standard by May 2012.[14] On March 30, 2012, NERC submitted a motion for an extension of time to submit modifications, and on May 4, 2012, the Commission granted the request through May 2013.[15] NERC submitted its petition requesting approval of proposed Reliability Standard BAL–003–1 on March 29, 2013.

C. Frequency Response and Frequency Bias Setting

10. As mentioned above, frequency response is a measure of an Interconnection's ability to stabilize frequency immediately following the sudden loss of generation or load. NERC explains that ''[s]ystem frequency reflects the instantaneous balance between generation and load. Reliable operation of a power system depends on maintaining frequency within predetermined boundaries above and below a scheduled value, which is 60 Hertz (Hz) in North America.'' [16] As discussed in this Notice of Proposed Rulemaking (NOPR), frequency response is provided in two stages, referred to as primary frequency response and secondary frequency response.

11. Primary frequency control involves the autonomous, automatic, and rapid action of a generator, or other resource, to change its output (within seconds) to rapidly dampen large changes in frequency. The ability of a power system to withstand a sudden loss of generation or load depends on the presence and adequacy of resources capable of providing rapid incremental power changes to counterbalance the disturbance and arrest a frequency deviation.[17]

12. Secondary frequency response, also known as automatic generation control (AGC), is produced from either

[7] NERC proposes to define Frequency Response Measure as ''[t]he median of all the frequency response observations reported annually by Balancing Authorities or Frequency Response Sharing Groups for frequency events specified by the ERO. This will be calculated as MW/0.1Hz.''

[8] *See* 16 U.S.C. 824o(e)(3).

[9] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval and Enforcement of Electric Reliability Standards,* Order No. 672, FERC Stats. & Regs. ¶ 31,204, *order on reh'g,* Order No. 672–A, FERC Stats. & Regs. ¶ 31,212 (2006).

[10] *North American Electric Reliability Corp.,* 116 FERC ¶ 61,062, *order on reh'g and compliance,* 117 FERC ¶ 61,126 (2006) (certifying NERC as the ERO responsible for the development and enforcement of mandatory Reliability Standards), *aff'd sub nom. Alcoa Inc. v. FERC,* 564 F.3d 1342 (D.C. Cir. 2009).

[11] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 375.

[12] *Mandatory Reliability Standards for the Bulk-Power System,* 130 FERC ¶ 61,218 (2010).

[13] *Mandatory Reliability Standards for the Bulk-Power System,* 131 FERC ¶ 61,136, at P 15 (2010).

[14] The Commission accepted NERC's proposed action plan on December 16, 2010. *Mandatory Reliability Standards for the Bulk-Power System,* 133 FERC ¶ 61,212 (2010).

[15] *Mandatory Reliability Standards for the Bulk-Power System,* 139 FERC ¶ 61,097 (2012).

[16] NERC Petition at 3.

[17] Conventional turbine-generators, as well as other resources, are capable of providing primary frequency response. *See* NERC Petition, Exh. D at 3.

manual or automated dispatch from a centralized control system.[18] It is intended to balance generation, interchange and demand by managing the response of available resources within minutes as opposed to primary frequency response, which manages response within seconds. Frequency bias is an input used in the calculation of a Balancing Authority's area control error (ACE) to account for the power changes associated with primary frequency response. However, frequency bias is not the same as frequency response. Frequency Bias Setting is a secondary control setting of the AGC system, not a primary control parameter, and changes in the Frequency Bias Setting of a Balancing Authority do not change the primary frequency response. The Frequency Bias Setting is used in AGC to prevent withdrawal of generator primary control action following a disturbance as long as frequency is off its nominal value.[19]

II. NERC Petition

13. NERC submitted its petition on March 29, 2013, seeking approval of Reliability Standard BAL–003–1, four new or modified definitions for inclusion in the NERC Glossary, violation risk factors and violation severity levels, an implementation plan for the proposed standard, and retirement of currently-effective BAL–003–0.1b. NERC explains that, beginning in 2010, NERC conducted a frequency response initiative to perform an in-depth analysis of Interconnection-wide frequency response ''to achieve a better understanding of the factors influencing frequency response across North America.'' [20] According to NERC, one of the basic objectives of the frequency response initiative included increasing coordinated communication and outreach on the issue, including webinars, and NERC alerts.[21]

14. NERC developed several reports that provide the conclusions and recommendations resulting from the frequency response initiative, which NERC includes as exhibits to its petition.[22] Further, NERC states that a detailed explanation of the development, testing, and implementation of proposed BAL–003–1 is provided in the Frequency Response Standard Background Document, included as Exhibit D to the petition.

A. Proposed Reliability Standard BAL–003–1 [23]

15. NERC states that the purpose of the proposed Reliability Standard is to ensure that ''a Balancing Authority's Frequency Bias Setting is accurately calculated to match its actual Frequency Response'' and also ''to provide consistent methods for measuring Frequency Response and determining the Frequency Bias Setting.'' [24] The proposed Reliability Standard consists of four requirements, and is applicable to Balancing Authorities and Frequency Response Sharing Groups.[25]

16. Requirement R1 requires that each Balancing Authority or Frequency Response Sharing Group must achieve an annual Frequency Response Measure that is ''equal to or more negative than its Frequency Response Obligation'' needed to ensure sufficient Frequency Response. Specifically, Requirement R1 provides:

> Each Frequency Response Sharing Group (FRSG) or Balancing Authority that is not a member of a FRSG shall achieve an annual Frequency Response Measure (FRM) (as calculated and reported in accordance with Attachment A) that is equal to or more negative than its Frequency Response Obligation (FRO) to ensure that sufficient Frequency Response is provided by each FRSG or BA that is not a member of a FRSG to maintain Interconnection Frequency Response equal to or more negative than the Interconnection Frequency Response Obligation.

NERC explains the Requirement R1 has the primary objective of ''determin[ing] whether a Balancing Authority has sufficient Frequency Response for reliable operations.'' [26] According to NERC, Requirement R1 achieves this objective ''via FRS Form 1 and the process in Attachment A that provides the method for determining the Interconnections' necessary amount of Frequency Response and allocating it to the Balancing Authorities.'' [27] According to NERC, another main objective of Requirement R1 is to provide the information needed to calculate Control Performance Standard limits and Frequency Bias Settings. NERC asserts that Requirement R1 and Attachment A satisfy the Commission's directive in Order No. 693 to ''determine the appropriate periodicity of frequency response surveys necessary to ensure that Requirement R2 and other requirements of the Reliability Standard are met . . .'' [28]

17. Requirement R2 requires that:

> Each Balancing Authority that is a member of a multiple Balancing Authority Interconnection and is not receiving Overlap Regulation Service and uses a fixed Frequency Bias Setting shall implement the Frequency Bias Setting determined in accordance with Attachment A, as validated by the ERO, into its Area Control Error (ACE) calculation during the implementation period specified by the ERO and shall use this Frequency Bias Setting until directed to change by the ERO.

NERC explains that setting the frequency bias to better approximate the Balancing Authority natural response characteristic will improve the quality of ACE control and general AGC system control response. NERC states that the ERO, in coordination with the regions of each Interconnection, will annually review Frequency Bias Setting data submitted by the Balancing Authorities.

18. Requirement R3 provides that:

> Each Balancing Authority that is a member of a multiple Balancing Authority Interconnection and is not receiving Overlap Regulation Service and is utilizing a variable Frequency Bias Setting shall maintain a Frequency Bias Setting that is: (1.1) Less than zero at all times, and (1.2) Equal to or more negative than its Frequency Response Obligation when Frequency varies from 60 [Hertz] Hz by more than +/− 0.036 Hz.

[18] NERC Petition at 11. Additional background information about the engineering concepts that pertain to frequency response is discussed in the Frequency Response Background Document, NERC Petition, Exh. D.

[19] NERC Petition at 11.

[20] *Id.* at 11–12.

[21] *Id.* at 12.

[22] *See* NERC Petition, Exh. F (Frequency Response Initiative Report), Exh. G (Status of Recommendations), and Exh. H (Supplemental Report).

[23] Proposed Reliability Standard BAL–003–1 is not attached to the notice of proposed rulemaking. The complete text of BAL–003–1 is available on the Commission's eLibrary document retrieval system in Docket No. RM13–11–000 and is posted on the ERO's Web site, *available at http://www.nerc.com.*

[24] NERC Petition at 15. *See also* proposed BAL–003–1, Purpose Statement:

> To require sufficient Frequency Response from the Balancing Authority (BA) to maintain Interconnection Frequency within predefined bounds by arresting frequency deviations and supporting frequency until the frequency is restored to its scheduled value. To provide consistent methods for measuring Frequency Response and determining the Frequency Bias Setting.

[25] NERC proposes to define Frequency Response Sharing Group as ''[a] group whose members consist of two or more Balancing Authorities that collectively maintain, allocate, and supply operating resources required to jointly meet the sum of the Frequency Response Obligations of its members.'' NERC Petition at 13. The proposed Reliability Standard allows Balancing Authorities to cooperatively form Frequency Response Sharing Groups as a means to jointly meet the obligations of the standard. *Id.*

[26] *Id.* at 15.

[27] *Id.* NERC explains that ''Attachment A (appended to the proposed standard) is a supporting document for proposed Reliability Standard BAL–003–1 that discusses the process the ERO will follow to validate the Balancing Authority's FRS Form 1 data and publish the official Frequency Bias Settings. FRS Form 1 provides the guidance as to how to account for and measure Frequency Response. FRS Form 1, and the underlying data retained by the Balancing Authority, will be used for measuring whether sufficient Frequency Response was provided.'' NERC Petition at 4.

[28] *Id.* at 16 (citing Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 375).

NERC explains that, in an Interconnection with multiple Balancing Authorities, the Frequency Bias Setting should be coordinated among all Balancing Authorities in the Interconnection. According to NERC, when there is a minimum Frequency Bias Setting requirement, it should apply for all Balancing Authorities. However, Balancing Authorities using a variable Frequency Bias Setting may have non-linearity in their actual response for a number of reasons including the deadband settings of their generator governors. The measurement to ensure that these Balancing Authorities are conforming to the Interconnection minimum is adjusted to remove the deadband range from the calculated average Frequency Bias Setting actually used.[29]

19. Requirement R4 requires that:

> Each Balancing Authority that is performing Overlap Regulation Service shall modify its Frequency Bias Setting in its ACE calculation, in order to represent the Frequency Bias Setting for the combined Balancing Authority Area, to be equivalent to either:
> • The sum of the Frequency Bias Settings as shown on FRS Form 1 and FRS Form 2 for the participating Balancing Authorities as validated by the ERO, or
> • the Frequency Bias Setting shown on FRS Form 1 and FRS Form 2 for the entirety of the participating Balancing Authorities' Areas.

NERC states that proposed Requirement R4 is similar to Requirement R6 in the currently-effective BAL–003–0.1b. NERC explains that overlap regulation service is a method of providing regulation service in which a Balancing Authority incorporates another Balancing Authority's actual interchange, frequency responses, and schedule into the providing Balancing Authority's AGC/ACE equation.[30]

B. Implementation Plan

20. NERC requests approval of an implementation plan for proposed BAL–003–1, pursuant to which (1) Requirement R2, Requirement R3 and Requirement R4 would become effective the first day of the first calendar quarter that is twelve months following the effective date of a Final Rule in this docket, and (2) Requirement R1 would become effective the first day of the first calendar quarter that is twenty-four months following the effective date of a Final Rule in this docket. NERC proposes retirement of the existing Reliability Standard BAL–003–0.1b at midnight of the day immediately prior to the effective date of Requirements R2, Requirement R3 and Requirement R4 of the proposed Reliability Standard.

21. NERC requests approval of three new definitions and the revised definition of Frequency Bias Setting effective the first day of the first calendar quarter that is twelve months following the effective date of a Final Rule in this docket.[31]

III. Discussion

22. Pursuant to section 215(d) of the FPA, we propose to approve the proposed Reliability Standard BAL–003–1 as just, reasonable, not unduly discriminatory or preferential, and in the public interest. The proposed Reliability Standard establishes a minimum Frequency Response Obligation for each Balancing Authority, provides a uniform calculation of frequency response, establishes Frequency Bias Settings that are closer to actual Balancing Authority frequency response, and encourages coordinated automatic generation control operation. The proposed Reliability Standard addresses a gap in reliability as these matters are either not—or not adequately-addressed in any currently-effective Reliability Standard. Further, proposed BAL–003–1 addresses certain directives from Order No. 693. We also propose to approve the proposed new and modified definitions, most violation severity levels and violation risk factors, and retirement of the currently-effective standard and NERC's implementation plan.

23. While we propose to approve BAL–003–1, we have concerns regarding certain provisions of the proposed standard, some of which NERC itself identifies in the reports included in its petition. Specifically, below, we discuss the following issues: (A) The use of median in determining the Frequency Response Measure; (B) determination of Interconnection Frequency Response Obligation; (C) methods of obtaining frequency response; (D) withdrawal of primary frequency response before secondary frequency response is activated; (E) light-load case study; (F) assignment of Violation Risk Factors and Violation Severity Levels; and (G) the associated and supporting documents, including Attachment A and the Procedure for ERO Support of Frequency Response and Frequency Bias Setting Standard. While we will not set deadlines for proposed directed modifications based on NERC's finding in its 2013 State of Reliability Report that actual frequency response is no longer declining in recent years,[32] we will expect NERC to continue to monitor such trends, and any change toward further frequency response decline will justify revisiting the issue of deadlines.

A. Use of the ''Median'' in Determining the Frequency Response Measure

24. As discussed above, Requirement R1 of BAL–003–1 provides that each Balancing Authority or Frequency Response Sharing Group achieve an annual Frequency Response Measure that is equal to or more negative than its Frequency Response Obligation needed to ensure sufficient Frequency Response. NERC proposes to define the Frequency Response Measure as ''the median of all the Frequency Response observations reported annually by Balancing Authorities or Frequency Response Sharing Groups for the frequency events specified by the ERO.'' [33] NERC defines the ''median'' as ''the numerical value separating the higher half of a one-dimensional sample, a one-dimensional population, or a one-dimensional probability distribution from the lower half. The median of a finite list of numbers is found by arranging all the observations from lowest value to highest value and picking the middle one.'' [34]

25. NERC states that the standard drafting team evaluated different approaches for averaging individual event observations to compute a technically sound estimate of Frequency Response Measure, including median and linear regression analysis.[35]

[29] NERC Petition at 20. NERC further states that ''For BAs using variable bias, FRS Form 1 has a data entry location for the previous year's average monthly Bias. The BA and the ERO can compare this value to the previous year's Frequency Bias Setting minimum to ensure Requirement R3 has been met.''

[30] *Id.* at 21.

[31] NERC proposes to incorporate the proposed revised definition for Frequency Bias Setting in Reliability Standards (1) BAL–001–0.1a Real Power Balancing Control Performance, (2) BAL–004–0 Time Error Correction, (3) BAL–004–1 Time Error Correction, and (5) BAL–005–0.1b Automatic Generation Control. NERC also proposes retirement of the existing definition of Frequency Bias Setting at midnight of the day immediately prior to the effective date of Requirement R2, Requirement R3, and Requirement R4 of the proposed Reliability Standard.

[32] *See* NERC, *State of Reliability 2013* (May 2013), *available at http://www.nerc.com/pa/RAPA/PA/Performance%20Analysis%20DL/2013_SOR_May%2015.pdf.*

[33] NERC Petition at 13.

[34] *Id.,* Exh. F (Frequency Response Initiative Report) at 72. NERC developed a procedure for selecting frequency response observations. *See* NERC Petition, Exh. C (Procedure for ERO Support of Frequency Response and Frequency Bias Setting Standard). The Procedure is referenced, but not included, in Attachment A of BAL–003–1.

[35] NERC Petition at 17–18. The Frequency Response Initiative Report defines the linear regression method as the linear average of a multi-dimensional sample, or a multi-dimensional population. *See id.,* Exh F at 73.

Explaining why the drafting team chose to use the median, NERC states:

> In general, statisticians use the median as the best measure of a central tendency when a population has outliers. Based on the analyses performed thus far, the standard drafting team believes that the median's superior resiliency to this type of data quality problem makes it the best aggregation technique at the time. However, the standard drafting team sees merit and promise in future research with sample filtering combined with a technique such as linear regression. When compared with the mean, linear regression shows superior performance with respect to the elimination of noise because the measured data is weighted by the size of the frequency changes associated with the event. . . . The standard drafting team acknowledges that linear regression should be re-evaluated for use in the BAL–003 Reliability Standard once more experience is gained with data collected.[36]

However, the Frequency Response Initiative Report compared the median, mean, and linear regression methods for measuring the frequency response, and found that the linear regression method is preferred. The Frequency Response Initiative Report recommended using a linear regression method for calculating the Balancing Authority Frequency Response Measure for compliance with the proposed standard.[37] This recommendation was not incorporated into the draft standard.[38]

26. NERC has provided adequate rationale for using the median to determine the required Frequency Response Measure. NERC explains that application of the median is supported by the analyses performed to date. The Commission proposes to approve BAL–003–1 on that basis.[39]

27. However, as NERC acknowledges in both its petition and Frequency Response Initiative Report, the use of linear regression is a superior method to determine the required Frequency Response Measure. According to NERC, the standard drafting team recognizes that the use of linear regression should be re-evaluated once more experience is gained with data collected.[40] We are also concerned whether use of the median adequately represents actual data that could, on occasions, be significantly higher or lower than the median. Thus, the Commission proposes to direct that NERC develop a modification to apply a more appropriate methodology for determining the required Frequency Response Measure. For example, based on the record in this docket, it appears that the linear regression method is superior to the median when determining the Frequency Response Measure. We seek comment on whether a more appropriate methodology should be used in the determination of the Frequency Response Measure.

B. Determination of Interconnection Frequency Response Obligation

28. Proposed BAL–003–1 establishes a target contingency protection criterion for each Interconnection, known as the Interconnection Frequency Response Obligation. The proposed methodology for determining each Interconnection's obligation for obtaining the necessary amount of frequency response is set forth in Attachment A of the proposed Reliability Standard. The Interconnection Frequency Response Obligation is based on the ''resource contingency criteria,'' which is the largest ''Category C'' event for the Interconnection,[41] except for the Eastern Interconnection, which uses the largest event in the last ten years.[42] The Interconnection Frequency Response Obligation for each Interconnection is a function of the resource contingency criteria and the maximum change in frequency. The maximum change in frequency is calculated by adjusting the starting frequency for each Interconnection by the ''prevailing UFLS first step,'' i.e., under-frequency load shedding for the Interconnection as adjusted by specific information on the frequency deviations for the observed events which make up the data set used to calculate the Frequency Response Measure.[43] For multiple Balancing Authority Interconnections, the Frequency Response Obligation is allocated to Balancing Authorities based on the formula set forth in Attachment A. FRS Form 1 and the underlying data retained by the Balancing Authorities are used for measuring whether frequency response was provided.

1. Eastern Interconnection—Prevailing UFLS First Step

29. For the Eastern Interconnection, Attachment A identifies 59.5 Hz as the ''first step'' of under-frequency load shedding in the calculation of the default Interconnection Frequency Response Obligation. Attachment A notes that this set point is ''a compromise value set midway between the stable frequency minimum established in PRC–006–1 (59.3 Hz) and the local protection under frequency load shedding setting of 59.7 Hz used in Florida and Manitoba.''[44] The Frequency Response Initiative Report notes that the Florida Reliability Coordinating Council (FRCC) concluded that the Interconnection Frequency Response Obligation starting frequency of the prevalent 59.5 Hz for the Eastern Interconnection is acceptable in that it imposes no greater risk of under frequency load shedding operation in FRCC for an external resource loss than for an internal FRCC event.[45]

30. NERC does not provide support for the statement that the first-step value of 59.5 Hz in the calculation of the Interconnection Frequency Response Obligation imposes no greater risk of under frequency load shedding operation in FRCC for an external resource loss than for an internal FRCC event. Noting that the actual first-step of under-frequency load shedding for the Eastern Interconnection is 59.7 Hz, we seek comment from NERC and others on the technical source or support for this statement. That is, we seek clarification and support if the intent of the proposal is that FRCC will start shedding load automatically before an event meets the value of 59.5 Hz used in the proposed Reliability Standard to determine the Interconnection Frequency Response Obligation.

2. Western Interconnection—Largest N–2 Event

31. As previously noted, the Interconnection Frequency Response Obligation is based on the largest Category C event, or N–2 (loss of two or more BES elements) for the Interconnection. The default

[36] *Id.* at 17–18 (footnote omitted). *See also id,* Exh. F at 72–78. NERC explains that the ''noise'' refers to factors that can influence data and produce outliers. *Id.* at 18, n.34.

[37] *See* NERC Petition, Exh. F at 78.

[38] NERC and the Frequency Response Working Group will include an update of the linear regression analysis from the Frequency Response Initiative Report during the annual review of the process for selection of frequency events for the Balancing Authorities. *See* NERC Petition, Exh. G (Status of Recommendations of the Frequency Response Initiative Report) at Recommendation 13.

[39] NERC Petition at 17.

[40] *Id.* at 18.

[41] *See* Proposed Reliability Standard BAL–003–1, Attachment A at 1. Category C events are defined in Reliability Standard TPL–003–0 (System Performance Following Loss of Two or More BES Elements), Table 1.

[42] For the Eastern Interconnection, the largest event in the last ten years is 4,500 MW, which occurred on August 4, 2007. *See* Proposed Reliability Standard BAL–003–1, Attachment A at 1; NERC Petition, Exh. F at 34–37, 54.

[43] *Id.* Under frequency load shedding is intended to be a safety net to prevent against system collapse from severe contingencies. The resource contingency criteria is selected to avoid violating the under frequency load shedding settings. *See* NERC Petition, Exh. D at 36 (''in general, the goal is to avoid triggering the first step of under-frequency load shedding (UFLS) in the given Interconnection for reasonable contingencies expected'').

[44] Proposed Reliability Standard BAL–003–1, Attachment A at 2.

[45] *See* NERC Petition, Exh. F (Frequency Response Initiative Report) at 4, n. 3.

Interconnection. The default Interconnection Frequency Response Obligation for the Western Interconnection uses the loss of two Palo Verde generating station units, which nets 2,400 MW as the resource contingency criteria.[46] However, NERC indicates that the default Interconnection Frequency Response Obligation calculation scenarios and the calculation of the Frequency Response Measure for the Western Interconnection do not take into account the intentional tripping of generation that will occur during the operation of remedial action schemes. For example, the Frequency Response Initiative Report indicates that operation of the Pacific Northwest Remedial Action Scheme trips up to 3,200 MW of generation in the Pacific Northwest on loss of the Pacific DC Intertie.[47] The Frequency Response Initiative Report recommends that NERC and the Western Interconnection analyze the implications of operation of the Pacific Northwest Remedial Action Scheme.[48]

32. We are concerned whether the N–2 contingency identified as an input to the Attachment A methodology for calculating the Interconnection Frequency Response Obligation identifies the largest N–2 event in the Western Interconnection. NERC's study suggests that, for example, the Pacific Northwest Remedial Action Scheme could result in a larger contingency that, if included as an input to the Attachment A calculation, would produce more accurate results. Accordingly, we propose to direct that NERC submit a compliance filing that analyzes, with supporting documentation, the implications of the Pacific Northwest Remedial Action Scheme or any other Remedial Action Scheme which involves intentional tripping of greater than 2,400 MW of generation, and whether such a contingency would provide a more accurate basis for the determination of the Western Interconnection default Interconnection Frequency Response Obligation.

C. Methods for Obtaining Frequency Response

33. In Order No. 693, the Commission directed NERC to develop a modification to BAL–003–0 that includes methods for ''obtaining'' frequency response.[49] While the proposed Reliability Standard establishes an Interconnection Frequency Response Obligation and allocates this obligation to the Balancing Authorities within the Interconnection, the proposed Reliability Standard imposes no obligation on resources that are capable of providing frequency response. NERC states that ''the creation of Frequency Response Sharing Groups is one of the ways the standard drafting team addressed the Commission's directive to provide methods for obtaining Frequency Response.'' [50] In addition, NERC states that there are various methods of obtaining frequency response, including regulation services, contractual services, tariff provisions, generator interconnection agreements, and contracts with an internal resource or loads.[51]

34. The proposed Reliability Standard imposes an obligation on each Balancing Authority to obtain frequency response, and a Balancing Authority not meeting its obligation would be in noncompliance of proposed BAL–003–1. We recognize that the Balancing Authorities must, in turn, obtain frequency response from available resources, and the proposed Reliability Standard imposes no obligation on those resources to provide frequency response.[52] The Commission proposes to direct NERC to submit a report 15 months after implementation of BAL–003–1 that provides an analysis of the availability of resources for each Balancing Authority to meet its Frequency Response Obligation during the first year of implementation. The report should also provide data indicating whether actual Frequency Response was sufficient to meet each Balancing Authority's Frequency Response Obligation. Further, upon completion of this analysis, should the findings indicate that the Frequency Response Obligation was not met, NERC should provide appropriate recommendations to ensure that frequency response can be maintained at all times within each Balancing Authority's footprint.

D. Premature Withdrawal of Primary Frequency Response

35. As explained above, following the sudden loss of generation, the automatic and immediate increase in power output by resources providing primary frequency control seeks to quickly arrest and stabilize the frequency of the interconnection, usually within 30 seconds or less. After this rapid primary frequency response, AGC provides secondary frequency response to return frequency to the scheduled value in time frames of several minutes after the loss of generation. If a significant amount of primary frequency response is withdrawn before the secondary frequency response is activated, a further drop in frequency response will occur. This drop in frequency is illustrated by the following diagram:[53]

[46] *See Id.,* Exh. F at 53.

[47] The Pacific Northwest Remedial Action Scheme, among other things, blocks frequency response from a number of generators and Balancing Authorities to avoid overloading the Pacific AC ties. *See* NERC Petition, Exh. F at 62.

[48] *See Id.* NERC notes that the maximum value of the Pacific Northwest Remedial Action Scheme has been updated to be 2,850 MW. *See* NERC Petition, Exh. G (Status of Recommendations of the Frequency Response Initiative Report).

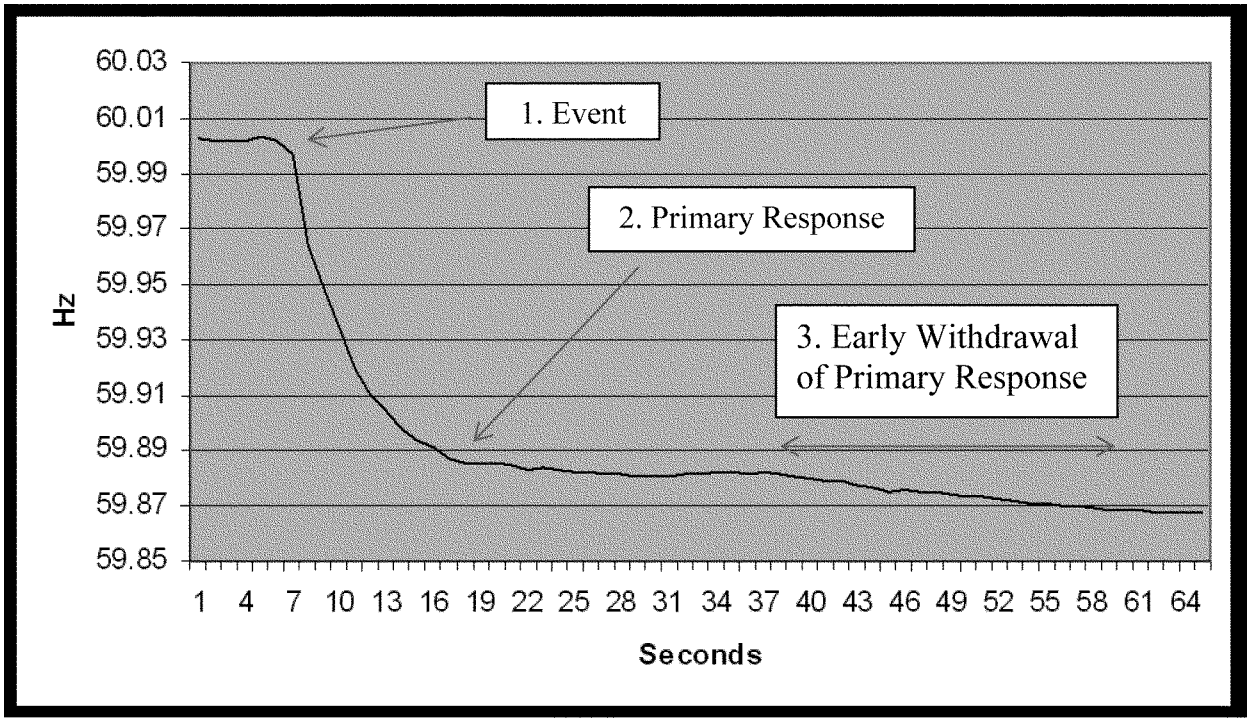
[49] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 375. The Commission directed NERC to develop a modification to BAL–003–0 that ''defines the necessary amount of Frequency Response needed for Reliable Operation for each balancing authority with methods of *obtaining* and measuring that the frequency response is achieved.'' *Id.* (emphasis added).

[50] NERC Petition at 13, 15–17.

[51] *Id.* at 14, n. 30; Exh. D at 37.

[52] NERC points out that improvements in frequency response have been achieved in the ERCOT Interconnection. *See* NERC Petition at 12, n. 27. For example, the ERCOT Nodal Operating Guides Section 2 has specified requirements for governor deadband settings. NERC Petition, Exh. F at 81. In addition, the Texas Reliability Entity Board of Directors has approved a Regional Reliability Standard, which is currently under review by the NERC Board of Directors, that requires generators to maintain prescribed deadband and droop settings that assure generator governors provide automatic sustained frequency response for specified frequency deviations. *See* BAL-001-TRE-1. *http://www.texasre.org/CPDL/BAL-001-TRE-1_5.24.11.docx.*

[53] NERC Petition, Exh. F at 35, fig. 21.



36. NERC indicates that, while the standards drafting team addressed the early withdrawal of primary frequency response, there are no requirements that address this issue and it remains a concern.[54] Specifically, during the initial recovery from the loss of a generator, a ''gap'' can occur if significant amounts of primary frequency responses are withdrawn before the secondary response is fully activated. As previously noted, the Interconnection Frequency Response Obligation for each Interconnection is a function of the resource contingency criteria and the maximum change in frequency.[55] The Frequency Response Initiative Report recommends that an adjustment should be made to the maximum allowable change in frequency to compensate for the predominate withdrawal of primary frequency response exhibited in an Interconnection until such withdrawal is no longer exhibited.[56] NERC includes an adjustment to provide an additional primary frequency response when early withdrawal of primary frequency response would occur.[57] This adjustment only partially addresses the concern because, while increased primary frequency response is beneficial, it still does not address early withdrawal of primary frequency response that otherwise would allow time for secondary frequency response to prevent further decline in frequency. The Frequency Response Initiative Report also recommends that this adjustment should be carefully monitored and recalculated during the annual Interconnection Frequency Response Obligation calculations.[58] The Frequency Response Initiative Report notes that there are potential ways of alleviating this withdrawal symptom, including, as discussed below, modification of outer-loop control systems that could prevent withdrawal of primary frequency response.

37. NERC's 2012 Frequency Response Initiative Report states ''[w]ithdrawal of primary frequency response is an undesirable characteristic associated most often with digital turbine-generator control systems using setpoint output targets for generator output. These are typically outer-loop control systems that defeat the primary frequency response of the governors after a short time to return the unit to operating at a requested MW output.'' [59] The Frequency Response Initiative Report recommends measuring and tracking frequency response sustainability trends.[60] The Frequency Response Initiative Report also recommends that ''NERC should include guidance on methods to reduce or eliminate the effects of primary frequency response withdrawal by outer-loop unit or plant control systems.'' [61]

38. We are concerned that proposed Reliability Standard BAL–003–1 does not adequately address the reliability issue associated with the withdrawal of primary frequency response prior to activation of secondary frequency response. The premature withdrawal of primary frequency response absent activation of resources providing secondary frequency response may lead to under-frequency load shed and possible cascading outages. Accordingly, we propose to direct that NERC develop a modification to BAL–003–1 to address the concern of premature withdrawal of frequency response prior to the activation of secondary frequency response.

E. Light-Load Case Study

39. NERC's Frequency Response Initiative Report recognizes that

[54] *See Id.,* Exh. D (Frequency Response Standard Background Document) at 19 (''the intentional withdrawal of response before frequency has been restored to schedule can cause a decline in frequency beyond that which would be otherwise expected. This intentional withdrawal of response is highly detrimental to reliability. Therefore, it can be concluded in general that sustained response has a higher reliability value than un-sustained response.'').

[55] The maximum change in frequency is an amount of frequency deviation based on the loss of the identified resource contingency that will not trigger under-frequency load shedding.

[56] NERC Petition, Exh. F at 5.

[57] In addition NERC extends the time period (to 20–52 seconds from the time of the frequency event) for the measurement of the low point of frequency deviation to provide an incentive to reduce primary frequency response withdrawal.

[58] *Id.* at 50. This adjustment is initially applied in the Eastern Interconnection.

[59] *Id.* at 31.

[60] *Id.* at 35. The Frequency Response Initiative Report also recognizes unit characteristics and operating philosophies as typical causes.

[61] *Id.* at 41–42.

''[s]ustainability of primary frequency response becomes more important during light-load conditions when there are generally fewer frequency-responsive generators online.'' [62] This is because inertia, i.e., the resistance to a change in the motion of an object, plays a crucial role in how fast frequency declines following the sudden loss of generation.[63] When the inertia on the system is low (i.e. fewer generators on line), the loss of generation creates a steeper frequency excursion and thus the need for faster frequency response.[64]

40. For the Eastern Interconnection, the proposed Reliability Standard's resource contingency criterion for calculating the Interconnection Frequency Response Obligation is based on an event that took place during heavy system load conditions. The stability simulation testing for the Eastern Interconnection resource contingency criteria used in the determination of the Interconnection Frequency Response Obligation was limited to analysis using a generic governor stability case, therefore representing conditions far different than light-load conditions when system inertia and load response would be expected to be lower than in the generic case. The Frequency Response Initiative Report recommends the development of a new light-load case study, and that the resource contingency criterion for the Eastern Interconnection Frequency Response Obligation should be re-simulated.[65] According to NERC, the Eastern Interconnection Reliability Assessment Group has agreed to prepare an updated generic governor 2013 summer light-load case (from the 2012 case series) by August 1, 2013, and evaluate Eastern Interconnection Frequency Response Obligation during the expected light-load conditions.[66]

41. We agree with NERC that the study of light-load scenarios is useful to determining an appropriate Interconnection Frequency Response Obligation, in particular for the Eastern Interconnection.[67] Accordingly, we propose to direct that NERC submit the results of the light-load case, together with NERC's recommendations on whether further actions are warranted.

F. Assignment of Violation Risk Factors and Violation Severity Levels

42. In its Petition, NERC proposes a ''medium'' violation risk factor for each requirement of the proposed Reliability Standard. We do not believe that NERC adequately justifies assignment of a medium violation risk factor to Requirement R1, which establishes the Frequency Response Measure a Balancing Authority must achieve to arrest a decline in system frequency. NERC asserts that a violation of this requirement will not cause bulk electric system instability, separation or cascading failures because ''a Balancing Authority's previous year's Frequency Bias setting is included within its ACE equation and would provide support for the contingency.'' [68] This explanation does not apply to Requirement R1. The ACE equation provides input to secondary frequency control. As identified in NERC's background document for BAL–003–1, secondary frequency is delivered within minutes while the time needed to arrest a frequency decline is within seconds.[69] NERC describes frequency response as a critical component to the reliable operation of the Bulk-Power System, indicating that Requirement R1 does not impose merely an administrative burden. The medium violation risk factor that the Commission approved for each BAL–003–0.1b requirement does not apply to Requirement R1 because it has no equivalent in that standard. We propose to direct NERC to assign a high violation risk factor to Requirement R1. We seek comments on this proposal.

43. We propose several changes to NERC's proposed violation severity level assignments. For Requirement R1, NERC proposes two violation severity levels depending on whether a Balancing Authority or a Frequency Response Sharing Group has an annual Frequency Response Measure ''less negative than its Frequency Response Obligation by more than 1% but by at most 30%, or 15 MW/0.1Hz, whichever one is the greater deviation from its [Frequency Response Obligation].'' This violation would have a ''lower'' severity level if ''[t]he summation of the Balancing Authorities' [Frequency Response Measure] within an Interconnection was equal to or more negative than the Interconnection's IFRO,'' and a ''high'' severity level if this summation ''did not meet its [Interconnection Frequency Response Obligation].'' Based on these two possibilities for this summation, NERC proposes either a ''medium'' severity level and a ''severe'' severity level for a Balancing Authority or Frequency Response Sharing Group with an Frequency Response Measure that is ''less negative than its [Frequency Response Obligation] by more than 30% or by more than 15 MW/0.1 Hz, whichever is the greater deviation from its [Frequency Response Obligation].''

44. NERC assigns these severity levels partly on performance of Requirement R1 by all other responsible entities in the Interconnection in which a violator is located. We do not agree with these assignments. Violation severity levels focus on a violator's deviation from required performance, not the risk the violation is expected to pose to reliability or performance by other entities.[70] A Balancing Authority or Frequency Response Sharing Group subject to Requirement R1 does not control compliance with this requirement by any other Balancing Authority or Frequency Response Sharing Group within the same Interconnection. It is unfair to base a penalty on a responsible entity in part upon the collective compliance or lack of compliance by independent entities. We propose that NERC modify its severity level assignments for Requirement R1 to remove references to performance by other entities or otherwise to address our concern. We seek comments on this proposal.

G. Supporting/Associated Documents

45. Proposed Reliability Standard BAL–003–1 has several supporting or associated documents. Attachment A is appended to the proposed Reliability Standard, and is explicitly referenced in Requirements R1 and R2. For example, Requirement R1 provides in part that

[62] *Id.* at 32.

[63] *Id.* at 39–40. Inertia is provided from the stored energy in the rotating mass of the turbine-generators and synchronous motors on the Interconnection. *See Id.,* Exh. D at 16–17.

[64] *Id.,* Exh. F at 40. The reduction in inertia also drives a need for higher speed response to frequency excursions.

[65] *Id.* at 99.

[66] *Id.,* Exh. G. A study conducted by the National Renewable Energy Laboratory explored the relationship between system disturbance and grid frequency perturbation *See* National Renewable Energy Laboratory, Eastern Frequency Response Study (May 2013). A key finding is that the dynamic model of the Eastern Interconnection can be adjusted to more closely capture the observed behavior. In particular, the amount of generation with governor controls activated was adjusted to model the contingency used in calculating the Eastern Interconnection Frequency Response Obligation. In addition, a light load power flow case was selected with the expectation that it would represent one of the more challenging conditions for the Eastern Interconnection with respect to frequency response. *See http://www.nrel.gov/docs/fy13osti/58077.pdf.*

[67] According to NERC, ''[m]odeling of frequency response characteristics has been a known problem since at least 2008, when forensic modeling of the Eastern Interconnection required a 'de-tuning' of the existing [Multiregional Modeling Working Group] dynamics governor to 20% of modeled (80% error) to approach the measured frequency response values from the [August 4, 2007] event.'' *See* NERC Petition, Exh. F at 35.

[68] *Id.,* Exh. J at 7.

[69] *Id.,* Exh. D at 38.

[70] Sanction Guidelines of the North American Electric Reliability Corporation (effective January 31, 2012), at 8 (section 3.1.2).

''[e]ach Frequency Response Sharing Group (FRSG) or Balancing Authority . . . shall achieve an annual Frequency Response Measure (FRM) (as calculated and reported in accordance with Attachment A) that is equal to or more negative than its Frequency Response Obligation . . .'' NERC's Procedure for ERO Support of Frequency Response and Frequency Bias Setting Standard (Procedure), is included as an ''associated document'' in the proposed Reliability Standard, and is referenced in Attachment A.[71] Likewise, Requirement 4 of proposed BAL–003–1 references FRS Forms 1 and 2, stating that ''each Balancing Authority that provides Overlap Regulation Service shall modify its Frequency Bias Setting in its ACE calculation . . . to be equivalent to ''the sum of Frequency Bias Settings as shown on FRS Form 1 and Form 2 . . . as validated by the ERO.'' [72]

46. These associated and supporting documents are explicitly referenced in the Requirements of the Reliability Standard. Thus, failure of a Balancing Authority to comply with such associated and supporting documents could result in non-compliance with the underlying Requirement.[73]

IV. Information Collection Statement

47. This NOPR proposes to approve Reliability Standard BAL–003–1, which establishes an Interconnection Frequency Response Obligation based on the frequency response observations reported annually by Balancing Authorities or Frequency Response Sharing Groups for the frequency events specified by the ERO. The collection of information contained in the proposed Reliability Standard BAL–003–1 is subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995 (PRA).[74] OMB's regulations require that OMB approve certain reporting and recordkeeping requirements (collections of information) imposed by an agency.[75] Upon approval of a collection of information, OMB will assign an OMB control number and expiration date. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

48. Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimate, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing the respondent's burden, including the use of automated information techniques. Specifically, the Commission asks that any revised burden or cost estimates submitted by commenters be supported by sufficient detail to understand how the estimates are generated.

49. *Public Reporting Burden:* The proposed Reliability Standard requires the collection of certain information to establish the Interconnection Frequency Response Obligation and the Frequency Bias Setting for each Balancing Authority. Each Balancing Authority reports its previous year Frequency Response Measure and Frequency Bias Setting to NERC, and revised Frequency Bias Settings are based on data from events the Balancing Authorities report on the proposed FRS Form 1. The information provided on the FRS Form 1 is based on events which qualify for analyses,[76] and NERC states that it will identify between 20 to 35 events in each Interconnection for calculating the Frequency Response Measure and Frequency Bias Setting and the Frequency Response Measure.[77]

50. Allotting eight hours for Balancing Authorities to compile the information on candidate events,[78] multiplied by 28 events per Balancing Authority per year yields 224 hours per year per Balancing Authority as the regulatory burden for compliance.[79] As of May 31, 2013, there are 132 registered Balancing Authorities.[80] Accordingly, the Commission estimates the annual regulatory burden for compliance with the proposed Reliability Standard to be $13,560 per Balancing Authority,[81] with an estimated total annual cost for all Balancing Authorities to be $1,789,920.[82]

BAL–003–1 (frequency response and frequency bias setting)	Number of balancing authority respondents (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1) × (2) × (3)	Estimated total annual cost ($) Total hours × $60
Annual Reporting	132	28	8	29,568	$1,774,080
Data Retention	132	1	2	264	15,840
Total				29,832	1,789,920

[71] The Procedure is provided as Exh. C to the NERC petition. NERC states that it included the Procedure in the petition for informational purposes and NERC does not request Commission approval of the document. NERC Petition at 4.

[72] Proposed Reliability Standard BAL–003–1 identifies FRS Form 1 and FRS Form 2 as ''associated documents.'' Neither form is included in the NERC Petition.

[73] Attachment A and the Procedures also require NERC to take certain actions pertaining to the calculation of frequency response measure and allocation among balancing authorities. The ERO is not an applicable entity pursuant to proposed Reliability Standard BAL–003–1. The ERO, however, has an independent obligation to ''ensure compliance with a reliability standard or any Commission order affecting the ERO or a regional entity'' and the Commission can take ''such action as is necessary or appropriate'' to ensure that the ERO fulfills this responsibility under Attachment A and the Procedures. *See* 16 U.S.C. 824o(e)(5).

[74] 44 U.S.C. 3507(d) (2006).

[75] 5 CFR 1320.11 (2012).

[76] NERC states that it will provide quarterly posting of candidate events to assist the Balancing Authorities with compliance, and lessen the burden of the annual submission of FRS Form 1 data. NERC Petition, Exh. C at 3–4.

[77] *Id.* at 1. The Frequency Response Initiative Report states that between 20 and 25 events are necessary for statistical analysis. *Id.,* Exh. F at 72.

[78] The information is automatically generated from computer data bases. However, time is allotted to compile, verify, and review the information.

[79] Assuming an average of between 20 and 35 events per year.

[80] NERC Compliance Registry List, May 30, 2013.

[81] The estimated hourly loaded cost (salary plus benefits) for an engineer is assumed to be $60/hour, based on salaries as reported by the Bureau of Labor Statistics (BLS) (*http://bls.gov/oes/current/naics2_22.htm*). Loaded costs are BLS rates divided by 0.703 and rounded to the nearest dollar. *http://www.bls.gov/news.release/ecec.nr0.htm*

[82] The estimated total annual cost includes an annual data retention burden of $15,840 for all Balancing Authorities.

Title: FERC–725R, Mandatory Reliability Standards: Reliability Standard BAL–003–1.

Action: Proposed Collection of Information.

OMB Control No.: To be determined.

Respondents: Business or other for-profit, and not-for-profit institutions.

Frequency of Responses: Annual.

51. *Necessity of the Information:* The proposed revision of NERC Reliability Standard BAL–003–1 is part of the implementation of the Congressional mandate of the Energy Policy Act of 2005 to develop mandatory and enforceable Reliability Standards to better ensure the reliability of the nation's Bulk Power System. Specifically, the proposed Reliability Standard BAL–003–1 would ensure sufficient Frequency Response from the Balancing Authorities to maintain Interconnection Frequency within predefined bounds.

52. *Internal Review:* The Commission has reviewed the proposed revision to the current Reliability Standard and made a determination that its action is necessary to implement section 215 of the FPA. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimate associated with the information requirements.

53. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director, email: *DataClearance@ferc.gov,* phone: (202) 502–8663, fax: (202) 273–0873].

54. For submitting comments concerning the collection of information and the associated burden estimate, please send your comments to the Commission and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–4638, fax: (202) 395–7285]. For security reasons, comments to OMB should be submitted by email to: *oira_submission@omb.eop.gov.* Comments submitted to OMB should include Docket Number RM13–11–000.

V. Environmental Analysis

55. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[83] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. The actions proposed here fall within the categorical exclusion in the Commission's regulations for rules that are clarifying, corrective or procedural, or do not substantially change the effect of the regulations being amended.[84] The actions proposed herein fall within this categorical exclusion in the Commission's regulations.

VI. Regulatory Flexibility Act

56. The Regulatory Flexibility Act of 1980 (RFA)[85] generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. The NERC registry includes 132 individual Balancing Authorities. Comparison of the NERC Compliance Registry with data submitted to the Energy Information Administration on Form EIA–861 indicates that, of these entities, 15 may qualify as small entities.[86]

57. As noted above, the Commission estimates the annual regulatory burden for compliance with the proposed Reliability Standard to be $13,560 per Balancing Authority. This estimate for all Balancing Authorities was established using 28 events per year, but smaller entities may have fewer events which qualify for analysis,[87] and the costs for these smaller entities may be reduced. Further, while the proposed Reliability Standard establishes a Balancing Authority's Frequency Response Obligation, because Balancing Authorities are currently providing frequency response, we do not anticipate additional compliance costs. Accordingly, we do not consider the cost of the proposed Reliability Standard to be a significant economic impact for small entities because it should not represent a significant percentage of an affected small entity's operating budget. Accordingly, no regulatory flexibility analysis is required.

VII. Comment Procedures

58. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due September 27, 2013. Comments must refer to Docket No. RM13–11–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

59. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

60. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

61. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VIII. Document Availability

62. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

63. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the

[83] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[84] 18 CFR 380.4(a)(2)(ii) (2012).

[85] 5 U.S.C. 601–612.

[86] The RFA definition of ''small entity'' refers to the definition provided in the Small Business Act (SBA), which defines a ''small business concern'' as a business that is independently owned and operated and that is not dominant in its field of operation. *See* 15 U.S.C. 632 (2006). According to the Small Business Administration, an electric utility is defined as ''small'' if, including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.

[87] The Procedures establish a minimum of 20 events for analysis, and a process for identifying when fewer than 20 events are available for analysis.

last three digits of this document in the docket number field.

64. User assistance is available for eLibrary and the Commission's Web site during normal business hours from the Commission's Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

By direction of the Commission.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–18000 Filed 7–26–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF STATE

48 CFR Parts 645 and 652

[Public Notice 8395]

RIN 1400–AC33

Department of State Acquisition Regulation

AGENCY: State Department.

ACTION: Proposed rule.

SUMMARY: This proposed rule will update the Department of State Acquisition Regulation (DOSAR) to conform to recent Federal Acquisition Regulation (FAR) changes and adds a new DOSAR clause and provision regarding reporting certain categories of Government-furnished and contractor-acquired property.

DATES: The Department will accept comments from the public up to September 27, 2013.

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

- *Email: RamirezIM2@state.gov.* You must include the RIN in the subject line of your message.
- *Mail* (paper, disk, or CD–ROM submissions): Ella Ramirez, Senior Procurement Analyst, Policy Division, Department of State, Office of the Procurement Executive, 2201 C Street NW., Suite 900, State Annex Number 27, Washington, DC 20522–0602.
- *Fax:* 703–875–6155.
- Persons with access to the Internet may also view this notice and provide comments by going to the *regulations.gov* Web site at *http://www.regulations.gov/index.cfm* and searching on docket DOS–2013–8395.

FOR FURTHER INFORMATION CONTACT: Ella Ramirez, Senior Procurement Analyst, Policy Division, Department of State, Office of the Procurement Executive, 2201 C Street NW., Suite 900, State Annex Number 27, Washington, DC 20522–0602; email address: *RamirezIM2@state.gov.*

SUPPLEMENTARY INFORMATION:

Background

This proposed rule provides updates to the DOSAR Government Property coverage to correspond with current FAR requirements and to implement Department of State policies regarding Government Property. The proposed rule would make the following changes:

- Update DOSAR Part 645, Government Property to conform to the current version of FAR Part 45. FAR Part 45 was completely revised and re-structured in 2007. Part 45 has been updated since, most recently in April 2012. DOSAR Part 645 was last updated in 1999, and is therefore out of date.
- Add a new DOSAR provision and clause regarding management and reporting of Government-furnished and contractor-acquired property. The provision at DOSAR 652.245–70, Status of Property Management System, was inadvertently left out of the previously approved information collection and it is now being added to update the DOSAR rule. The provision requests information from offerors regarding their property management systems in order to comply with FAR 45.201(c), which says that the solicitation shall require all offerors to submit a description of the offeror's property management system, plan, and any customary commercial practices, voluntary consensus standards, or industry-leading practices and standards to be used by the offeror in managing Government property. Additionally, the Department must be able to determine if there will be a need for a review of the prospective contractor's property control system. The new clause at DOSAR 652.245–71, Accounting for Government Property, requests quarterly reporting of U.S. Department of State capitalized property which consists of the following:
  - ○ Highway motor vehicles and aircraft, regardless of cost, that are provided by the Government or acquired by a contractor for the Government;
  - ○ Software exceeding $500,000 in value, including labor costs to develop, that is provided by the Government or acquired by a contractor for the account of the Government; and
  - ○ Personal property greater than $25,000 (and not included in the above list) that is provided by the Government or acquired by the contractor for the account of the Government. The personal property must be complete within itself; must not lose its identity or become a component part of other property when put into use; and is of a durable nature with an estimated useful life expectancy to exceed two years.

This clause is being added due to the need to obtain current data to support the Department of State (DOS) financial statements. From a financial accounting perspective, DOS must have a way of keeping track of its capital assets; therefore, this clause requires reporting of all personal property that meets the criteria for capitalization, as set forth in the Foreign Affairs Manual (FAM) at 4 FAM 734.2.

Regulatory Findings

Administrative Procedure Act

In accordance with provisions of the Administrative Procedure Act, the Department is publishing this proposed rule and inviting public comment.

Regulatory Flexibility Act

The Department of State, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This determination was based on the fact that the reporting requirements are targeted at a very narrow segment of government property and based on a determination that there are only 14 contractors who are currently subject to the reporting requirements of the clause. Only four of these are small business concerns. Thus, it was concluded that the rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by the Small Business Regulatory Enforcement Act of 1996 (5 U.S.C. 801 *et seq.*). This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based

companies to compete with foreign-based companies in domestic and import markets. This determination was based on the fact that the reporting requirements are targeted at a very narrow segment of government property, and on a determination that there are only 14 contractors who are currently subject to the reporting requirements of the clause. The rule does not place new requirements on contract performance, but merely addresses reporting of existing information.

Executive Orders 12866 and 13563

Executive Orders (E.O.) 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). E.O. 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Department of State does not consider this rule to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review.

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

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

Executive Order 13175

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) applies, because the proposed rule imposes information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The Department of State is seeking OMB approval for the information collection described below.

- *Title of Information Collection:* Department of State Acquisition Regulation (DOSAR) 652.245–70, Status of Property Management System
- *OMB Control Number:* 1405–0050
- *Type of Request:* Revision of Currently Approved Collection
- *Originating Office:* Bureau of Administration, Office of Procurement Executive, Policy Division (A/OPE/PD)
- *Form Number:* None
- *Respondents:* Business and other for-profit and not-for-profit organizations wishing to receive Department of State contracts.
- *Estimated Total Number of Respondents:* 3,466
- *Estimated Total Number of Responses:* 9,330
- *Average Time Per Response:* 30 hours
- *Total Estimated Burden Time:* 275,984
- *Frequency:* On Occasion
- *Obligation to Respond:* Required to Obtain or Retain a Benefit

The total number of responses was increased by fourteen from 9,316 to 9,330. As a result of this change, the total estimated burden was increased from 275,970 hours to 275,984 hours. The increase in the responses and the burden is due to the impact of this DOSAR provision.

The Department will accept comments from the public up to September 27, 2013.

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

- *Web: www.Regulations.gov*, search for this notice by using this rule's docket number—DOS–2013–8395.
- *E-Mail: RamirezIM2@state.gov* with the subject line, ''DOSAR Rule Comments.''
- *Fax:* 703–875–6155

Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Ella Ramirez, Senior Procurement Analyst, who may be reached at (703) 516–1693, or at *RamirezIM2@state.gov.*

Abstract of proposed collection:

The proposed rule will update the Department of State Acquisition Regulation (DOSAR) to conform to recent Federal Acquisition Regulation (FAR) changes, and adds a new DOSAR provision, 652.245–70, regarding reporting on the status of offeror's property management systems. Respondents are offerors on solicitations for contracts under which specified government property will be provided. This is an existing IC, 1405–0050, Department of State Acquisition Regulation (DOSAR) 652.245–70, Status of Property Management System. This provision was inadvertently left out of the previously approved Information Collection package. The new provision is being inserted into the DOSAR and concurrently added into the current IC. The new DOSAR provision (and IC requirement) asks for procedures for government property management (transportation, software, personal property). Over the course of the last two fiscal years (FY 11 and FY 12), only four solicitations were issued under which this new reporting was required, and on those solicitations, an average of 2.3 submissions was received. Based on conversations with a sample of submitters, we estimate that approximately 1.0 hour is required to research, document and incorporate the information into the proposal.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Legal Authorities are as follows:

(1) Code of Federal Regulations, title 48, chapter 6, Department of State Acquisition Regulation
(2) Code of Federal Regulations, title 48, chapter 1, Federal Acquisition Regulation
(3) Public Law 103–236, Foreign Relations Authorization Act, Fiscal Years 1994 and 1995

(4) Foreign Service Buildings Act of 1926, as amended (22 U.S.C. 302)
(5) Omnibus Diplomatic Security and Antiterrorism Act of 1986 (22 U.S.C. 4852)
(6) Foreign Relations Authorization Act, Fiscal Years 1990 and 1991 (22 U.S.C. 4864)

Methodology:

The information collections may be sent to the Office of Finance via email at *RM-FPRAPROP@state.gov*.

List of Subjects in 48 CFR Parts 645 and 652

Government procurement, Electronic commerce, Contracts.

Accordingly, for reasons set forth in the preamble, title 48, chapter 6 of the Code of Federal Regulations is proposed to be amended as follows:

■ 1. Revise part 645 to read as follows:

PART 645—GOVERNMENT PROPERTY

Subpart 645.1—General

Sec.
645.107 Contract clauses.
645.107–70 DOSAR contract clause and solicitation provision.

Authority: 40 U.S.C. 121; 22 U.S.C. 2651a; 48 CFR Subpart 1.3.

645.107 Contract clauses.

645.107–70 DOSAR contract clause and solicitation provision.

(a) The contracting officer shall insert the provision at 652.245–70, Status of Property Management System, in solicitations when any of the following conditions apply:

(1) Highway motor vehicles and aircraft, regardless of cost, are provided by the Government or acquired by the contractor for the account of the Government;

(2) Software exceeding $500,000 in value, including labor costs to develop, is provided by the Government or acquired by the contractor for the account of the Government; or

(3) Personal property greater than $25,000 (and not in paragraphs (a)(1) or (2) of this section) is provided by the Government or acquired by the contractor for the account of the Government. The personal property must be complete within itself; does not lose its identity or become a component part of other property when put into use; and is of a durable nature with an estimated useful life expectancy to exceed two years.

(b) The contracting officer shall insert the clause at 652.245–71, Accounting for Government Property, in all solicitations and contracts than contain the provision at 652.245–70.

PART 652—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 2. The authority citation for part 652 continues to read as follows:

Authority: 40 U.S.C. 486(c); 22 U.S.C. 2658.

■ 3. Add section 652.245–70 to read as follows:

652.245–70 Status of Property Management System.

As prescribed in 645.107–70(a), insert the following provision:

Status of Property Management System (DATE)

(a) When used in this provision, government-furnished property, government property, and contractor-acquired property are as defined in FAR 45.101.

(b) Offerors shall include in their quote or offer:

(1) Whether the offeror's property management system that will be used on this contract to track government-furnished property and/or contractor-acquired property has been determined to be adequate by a Federal property manager;

(2) The name, address, telephone number and email address of both the—

(i) Cognizant Administrative Contracting Officer (ACO) responsible for review and determination of adequacy of the contractor's property system; and

(ii) The cognizant contractor government property manager;

(3) The voluntary consensus standard or industry leading practices and standards to be used in the management of government property, or existing property management plans, methods, practices or procedures for accounting of property.

(End of provision)

■ 4. Add section 652.245–71 to read as follows:

652.245–71 Accounting for Government Property.

As prescribed in 645.107–70(b), insert the following clause:

Accounting for Government Property (DATE)

(a) *Definitions.* As used in this clause:

Disposition means government property that has been removed from use on the contract.

Highway motor vehicle means any vehicle, self propelled or drawn by mechanical power, designed and operated principally for highway transportation of property or passengers. (41 CFR 102–34.35)

(b) The Contractor shall establish and maintain a property management system that is in accordance with the clause at FAR 52.245–1, Government Property. This clause supplements these requirements by specifying the U.S. Department of State capitalized property reporting requirements.

(c) The Contractor shall submit electronically one report on an annual basis and three other reports on a quarterly basis for the following:

(1) Where highway motor vehicles and aircraft, regardless of cost, are provided by the Government or acquired by the Contractor for the account of the Government;

(2) Where software exceeding $500,000 in value, including labor cost to develop, is provided by the Government or acquired by the Contractor for the account of the Government; or

(3) Where personal property greater than $25,000 (not in paragraph (c)(1) or (c)(2) of this clause) is provided by the Government or acquired by the Contractor for the account of the Government. The personal property must be complete within itself; does not lose its identity or become a component part of other property when put into use; and is of a durable nature with an estimated useful life expectancy to exceed two years.

(d) The Contractor shall submit all annual and quarterly reports in the following format, except as stated in paragraph (e) of this clause:

(1) Property shall be grouped by the following property classifications:

(i) Highway motor vehicles;
(ii) Communications equipment;
(iii) Information technology (formerly called automated data processing) equipment;
(iv) Reproduction equipment;
(v) Security equipment;
(vi) Software;
(vii) Software-in-development;
(viii) Medical equipment;
(ix) Aircraft property; and
(x) Other depreciable personal property.

(2) Data elements for each unit of property shall include:

(i) Contract number: Federal Government contract or purchase order number;
(ii) Task Order number;
(iii) Property classification: From classification listed in paragraph (d)(1) of this clause;
(iv) Denotation as either government-furnished property (GFP) or contractor-acquired property (CAP);
(v) Noun name of property (i.e. generator);
(vi) Description of property;
(vii) Manufacturer;
(viii) Model;
(ix) Serial number;
(x) National Stock Number if applicable
(xi) Unique-item identifier or equivalent: such as barcode label (tag number) or system-assigned number. For highway motor vehicles, this must be the vehicle identification number (VIN);
(xii) Date received: Date contractor took possession;
(xiii) Date placed in service;
(xiv) Acquisition method:
(A) Contractor Acquired Property (CAP); or
(B) Government-furnished property (GFP); (If from another DOS contract, or government agency, please specify).
(xv) Acquisition cost (As defined in FAR clause 52.245–1(a)): Use estimated fair-market value for property transferred or donated, at the time acquired, if actual cost is unknown;
(xvi) Estimated useful life in years: The period during which the property is expected

to provide the service for which it was intended. This should normally be equivalent to the depreciation schedule;

(xvii) Current location of the property: Country and city

(xviii) Disposal Date

(xix) Disposal Method

(e) The Contractor shall submit a full property report, as described in this clause, including affirmation, for the report covering the first quarter of the base contract. Thereafter, submission of reports shall follow the time frames outlined in paragraph (h) of this clause. Quarterly property reports, other than the annual report, may be either full property reports or only updates to the full property report. Quarterly reports do not require affirmations even when the Contractor chooses to submit a full property report. Affirmations are only required for the report covering the first quarter of the contract and the annual report for each subsequent option year of the contract. If the Contractor submits a full property report, dispositions subsequent to any previous report must also be identified in the report. If a Contractor submits a quarterly report in the form of an update, the update shall include acquisitions and dispositions.

(f) The Contractor shall provide any required affirmation in the following format. The affirmation shall be signed by the Contractor's managerial personnel (as defined in FAR clause 52.245–1):

''I hereby affirm that a physical inventory of the government property (as defined in Federal Acquisition Regulation (FAR) 45.101) of Department of State contract number *(insert contract number)* has been completed as of *(insert date),* the inventory has been reconciled to our records and the property information in our report, and that to the best of my knowledge and belief, this inventory is accurate, current, and complete.

Signed:

_____

Printed:

_____

Title:

_____

Date:

_____

(g) In addition to the information required above, the Contractor shall include in all property reports:

(1) The current degree to which properly qualified Government personnel have evaluated the Contractor's property management system as being an adequate property management system;

(2) The name, mailing address, telephone number, and email address of the qualified Government person(s) who performed the evaluation of the Contractor's property management system; and

(3) The cognizant contractor government property manager.

(h) Reports shall cover the following time periods and are due on the following dates:

Report	Period covered	Due date
1st Quarter Report	For 1st quarter ending December 31	January 15.
2nd Quarter Report	For 2nd quarter ending March 31	April 30.
(Annual Property Report)		
3rd Quarter Report	For 3rd quarter ending June 30	July 15.
4th Quarter Report	For 4th quarter ending September 30	October 8.

(i) The Contractor shall send a copy of all reports to the individuals listed below. The Contractor shall submit reports in electronic format as an attachment to an email. The affirmation described in paragraph (f) of this clause shall be in Adobe Acrobat (.pdf) format (including the signature), while the inventories, both quarterly and annual, shall be in Microsoft Excel format (Adobe Acrobat and Microsoft Excel versions shall be compatible with versions used by DOS). Send all reports to:

(1) The contracting officer;

(2) The Property Administrator;

(3) The contracting officer's representative (COR);

(4) *Propertyreports@state.gov;*

(5) *RM-FPRA-PROP@state.gov;* and

(6) All individuals listed below (if any):

(i) Contracting officer shall list individuals, if any.

(ii) [Reserved]

(j) The Contractor shall cooperate by responding timely to all follow up questions and requests for supporting documentation whether requested by the Department or external auditors.

(End of clause)

Dated: June 12, 2013.

Corey M. Rindner,

Procurement Executive, Department of State.

[FR Doc. 2013–18167 Filed 7–26–13; 8:45 am]

BILLING CODE 4710–24–P

Notices

Federal Register

Vol. 78, No. 145

Monday, July 29, 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.

DEPARTMENT OF AGRICULTURE

Plant Breeding Listening Session meeting

ACTION: Notice of a Plant Breeding Listening Session Meeting.

SUMMARY: The Office of the Chief Scientist of the United States Department of Agriculture (USDA) announces a Plant Breeding Listening Session stakeholder meeting for all interested plant breeding and cultivar development stakeholders.

DATES: The Plant Breeding Listening Session will be held August 15, 2013. The public may file written comments up to one week after the meeting with the Contact Person.

ADDRESSES: The meeting will take place at the Jamie L. Whitten Building, 12th Street and Jefferson Drive SW., Washington, DC 20250. Written comments from the public may be emailed to the Contact Person identified in this notice.

FOR FURTHER INFORMATION CONTACT: Jenna Jadin, Advisor, Office of the Chief Scientist; telephone: (202) 260–8318; or email: *jenna.jadin@osec.usda.gov.*

SUPPLEMENTARY INFORMATION: The Under Secretary of Research, Education, and Economics, Dr. Catherine Woteki, and the Director of the National Institute for Food and Agriculture (NIFA), Dr. Sonny Ramaswamy, have been invited to provide brief remarks and welcome stakeholders during the meeting.

On Thursday, August 15, 2013, the listening session will be held from 8:30 a.m.—5:30 p.m. in room 107–A of the Jamie L. Whitten building. Specific topics of discussion in the morning session will include an introduction to the plant breeding portfolio of all of USDA's relevant mission areas, including a discussion of relevant work, goals, and results.

In the late morning, the audience will listen to 10 minute presentations from stakeholders that discuss their plant breeding and cultivar development programs and/or their perception of needs and potential improvements in publicly-funded plant breeding and cultivar development research. Following lunch, stakeholder presentations will continue, and will be followed by a summary and discussion session in which participants will be asked to discuss their reactions to the information presented earlier in the day, as well as respond to a set of questions presented by the organizers which are aimed at getting feedback on plant breeding and cultivar development needs. The meeting will adjourn by 5:30 p.m.

All stakeholders are welcome to apply for a 10-minute presentation slot, however, due to time constraints, a limited number will be selected on a first come, first served basis. To apply for a slot, please email the Contact Person listed above. All presentations may be simple oral presentations or given in PowerPoint, however, the organizers request that a written transcript of the talk be submitted no later than one week after the event. Written comments by attendees or other interested stakeholders will be welcomed before and up to one week following the listening session (by close of business Thursday, August 22, 2013). All statements will become a part of the official record of the Office of the Chief Scientist and will be kept on file in that office.

All parties interested in attending this event must RSVP no later than August 8, 2013 to the Contact Person listed above.

Due to size constraints in the meeting room, only the first 70 responders will be accepted.

Done at Washington, DC this 23rd day of July 2013.

Ann Bartuska,

Deputy Under Secretary, REE, Chief Scientist, USDA.

[FR Doc. 2013–18153 Filed 7–26–13; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Second Sugar Purchase and Exchange for Re-export Program Credits

AGENCY: Commodity Credit Corporation and Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: The Commodity Credit Corporation (CCC) announces the intent to purchase raw cane sugar to be offered in exchange for Refined Sugar Re-export Program credits as a follow-up to the notice of sugar purchase and exchange for Re-export Program credits published in the **Federal Register** on June 18, 2013 (78 FR 36508–36510). CCC will purchase the sugar from domestic sugarcane processors under the Cost Reduction Options of the Food Security Act of 1985, and concurrently exchange such sugar for credits under the Refined Sugar Re-export Program.

DATES: Effective date: July 29, 2013.

FOR FURTHER INFORMATION CONTACT: For current market conditions, eligibility, and criteria for evaluation information contact Daniel Colacicco; telephone (202) 690–0734. For sugar purchase and general exchange information contact Pamela McKenzie; telephone (202) 260–8906. For Refined Sugar Re-export Program information contact Ron Lord; telephone (202) 720–6939. Persons with disabilities who require alternative means for communications (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION: Under the previous sugar purchase and exchange for Re-export Program credits announced in the **Federal Register** on June 18, 2013 (78 FR 36508–36510), and the inclusion of Certificates of Quota Eligibility (CQEs) issued pursuant to the United States-Colombia Trade Promotion Agreement and the United States-Panama Trade Promotion Agreement announced in the **Federal Register** on June 26, 2013 (78 FR 38286), CCC purchased approximately 91,000 metric tons (MT) of sugar from the domestic market and exchanged the purchased sugar for 300,000 MT of credits from Refined Sugar Re-export Program licenses and CQEs issued under the United States-Colombia Trade Promotion Agreement, at an aggregate

cost of $43.8 million. These purchase and exchange transactions are estimated to have saved CCC $66.9 million in Sugar Program costs by reducing the amount of sugar loan collateral forfeitures. However, a significant forfeiture threat still remains, which will be mitigated by this action.

The sugar purchase will be administered similarly to the purchase and exchange announced on June 18, 2013. CCC will invite domestic sugarcane processors to offer raw cane sugar to CCC, as authorized by the Cost Reduction Options of the Food Security Act of 1985, as amended (7 U.S.C. 1308a(c)), which permits CCC to purchase sugar provided that the price paid is below the comparable regional or State costs of later acquiring the sugar through loan forfeiture under the Sugar Program. The purchase invitation will describe the information needed from sugar sellers, such as the quantity, storage location, and CCC warehouse code. The purchase invitation will also specify additional details, such as the opening and closing dates for offers and other terms of CCC's sugar purchase. CCC will then post a catalog listing the available sugar quantities. The purchase invitation and catalog will be placed on the Farm Service Agency (FSA) Commodity Operations Web site at *http://www.fsa.usda.gov/FSA/webapp?area=home&subject=coop&topic=landing.* In order to allow for timely market pricing, CCC will permit sugarcane processors to provide price offers to the catalog to coincide with the timing of the exchange invitation's closing bid date.

Subsequently, approximately 2 calendar days later, an exchange invitation will be made under which CCC will offer available sugar to Refined Sugar Re-export Program licensees in exchange for re-export credits. The exchange invitation will specify a minimum bid ratio of credits per metric ton of CCC sugar. The exchange invitation will be placed on the FSA Commodity Operations Web site at *http://www.fsa.usda.gov/FSA/webapp?area=home&subject=coop&topic=landing.*

The sugar purchase will be different from the earlier purchase in that only sugarcane processors may offer to sell sugar to CCC. This purchase also differs from the earlier purchase in that any sugar offered to CCC must be pledged as collateral for CCC loan, as the purpose of this action is to reduce the forfeitures of loan collateral under the sugar loan program and this would most directly reduce forfeitures. The exchange invitation and evaluation process will be administered in the same way, except for the timing, as announced in the notice published on June 18, 2013.

CCC may make future offers to purchase sugar and exchange it for re-export credits under this notice. Future offers to purchase and exchange will be made publicly available electronically on the FSA Web site at *http://www.fsa.usda.gov/FSA/webapp?area=home&subject=coop&topic=pas,* and also on the Federal Business Opportunities Web site at *www.fbo.gov.* All terms and conditions for any future sugar purchases and exchanges will be included in the purchase and exchange invitations.

Signed on July 24, 2013.

Darci L. Vetter,

Deputy Under Secretary, Farm and Foreign Agricultural Services

Juan M. Garcia,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 2013–18219 Filed 7–26–13; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Conejos Peak Ranger District, Rio Grande National Forest; Colorado; Cumbres Vegetation Management Project

AGENCY : Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Conejos Peak Ranger District, Rio Grande National Forest, proposes to salvage timber stands killed or infested by spruce beetles; reduce fuel loading, particularly adjacent to private lands; cut potential hazard trees along private property, roads, and other infrastructure; and regenerate forested acres, as needed, to move toward the long-term desired conditions described in the Forest Plan.

DATES: Comments concerning the scope of the analysis must be received by August 28, 2013. The draft environmental impact statement is expected in September 2013 and the final environmental impact statemen t is expected in November 2013.

ADDRESSES: Send written comments to Diana McGinn, Team Leader, San Luis Valley Publ ic Land Center, 1803 W. Hwy 160, Monte Vista, CO 81144. Commen ts may also be sent via e-mail to *comments-rockv-mountain-rio-qrande-conejos-peak@fs.fed.us,* or via facsimile to 719–852–6250, with subject Cumbres Vegetation Management Project.

FOR FURTHER INFORMATION CONTACT: Diana McGinn at 719–852–6241 or visit the Forest Web site: *http://www.fs.usda.gov/projects/riogrande/landmanagement/projects.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m ., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose an d need for the Cumbres Vegeta tion Management Project is move toward achieving long-term desired conditions described in the Forest Plan for this area following extensive tree mortality caused by epidemic levels of spruce beetles. Actions taken to meet these goals would include: (1) Harvesting dead and dying trees to provide wood products, while reducing the continuous extent of large fuels, particularly around private lands; (2) removing trees that create a potential safety hazard in areas of concentrated public use or that have the potential to damage public or private propert y as they fall; (3) Re-plant portions of harvested s t ands to speed ecological recovery.

Proposed Action

The Rio Grande National Forest proposes to harvest and regenerate timber stands killed by or infested with spruce beetles in an area located approximately 23 miles west of Antonito. Colorado. The project would use the existing transportation system except for the construction or re-use of approximately 8.3 miles of temporary road segments. All temporary roads would be rehabilitated and closed following use. Tree planting would follow harvest operations in areas with inadequate existing regeneration and where aspen sprouting is unlikely, in order to maintain diverse forest cover over the long-term.

Responsible Official

Conejos Peak District Ranger at 15571 County Road T5, La J ara, CO, 81140.

Nature of Decision To Be Made

An environmental impact statement (EIS) that discloses the environmental consequences of implementing the proposed action and alternatives to the proposed action, including No Action, will be prepared. A separate Record of Decision (ROD) wlll explain the Responsible Official's decision

regarding whether or not to implement some level of timber harvest and other proposed activities on alL part. cr none cf the area analyzed, given the consideration of multiple- use goals and objectives.

Preliminary Issues

The effect of proposed activities on soil and watershed condition and on the habitat structural needs of the local populati on of Canada Lynx, a Threatened species, and their primary prey, the snowshoe hare.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement . The Forest invites public comment and participation for this project by publication of this notice. Comments are also invited by: publication in the quarterly Schedule of Proposed Actions (SOPA): public notice regarding this project i n the newspaper of record, the *Valley Courier:* letters to potentially interested individuals, tribal governments, elected officials, and State and other Federal Agencies. Information will also be posted on the Rio Grande National Forest project Web site as this project progresses. Comments received during these and other scopin g efforts will be considered in this EIS.

It is the responsibility of persons providing comments to submit them by the close of the conunent period. Only those who submit timely and specific written comments will have eligibility (36 CFR 218.5) to file an objection under 36 CFR 218.8. Therefore, comments should be provided prior to the close of the scoping period and should clearly articulate the reviewer's concerns and contentions.

Conunents received in response to this solicitation, including names and addresses of those who comment will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered; however anonymous comments will not provide the Agency with the ability to provide the respondent with subsequent environmental documents.

Dated: July 17, 2013.

Andrea Jones,

District Ranger.

[FR Doc. 2013–17968 Filed 07/26/2013 at 8:45 a.m.; Publication Date: 07/29/2

[FR Doc. 2013–17968 Filed 7–26–13; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Flathead Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Flathead Resource Advisory Committee will meet in Kalispell, Montana on the dates listed below. The Committee is authorized under the Secure Rural Schools and Community Self-Determination Act of 2000, (the Act) (Pub. L. 112–141) and operates in compliance with the Federal Advisory Committee Act (FACA) (Pub. L. 92–463). The purpose of the Committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the Title II of the Act. The meeting is open to the public. The purpose of the meeting is to hear project proposal presentations for 2014.

DATES: The meetings will be held every Tuesday between August 27, 2013, and September 24, 2013, from 4:00 p.m. to 6:30 p.m. (MST). Exact meeting dates are as follow:

1. August 27, 2013—4:00 p.m. to 6:30 p.m.
2. September 3, 2013—4:00 p.m. to 6:30 p.m.
3. September 10, 2013—4:00 p.m. to 6:30 p.m.
4. September 17, 2013—4:00 p.m. to 6:30 p.m.
5. September 24, 2013—4:00 p.m. to 6:30 p.m.

All Resource Advisory Committee meetings are subject to change or cancellation. For status of the Flathead Resource Advisory Committee meetings prior to attending each meeting, contact: Wade Muehlhof, Public Affairs Specialist, Flathead National Forest, 406–758–5252, *ewmuehlhof@fs.fed.us.*

ADDRESSES: The meetings will be held at the Flathead National Forest Office, 650 Wolfpack Way, Kalispell, Montana 59901. Written comments may be submitted as described under Supplementary Information listed below. All comments, including names and addresses when provided are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Flathead National Forest Office, 650 Wolfpack Way, Kalispell, Montana 59901. Please call ahead to 406–758–5252 to facilitate entry into the building in order to view comments.

FOR FURTHER INFORMATION CONTACT: Wade Muehlhof, Public Affairs Specialist, Flathead National Forest, 406–758–5252, *ewmuehlof@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The following business will be conducted: presentation of project proposals and approval of projects. Additional information on the Flathead Resource Advisory Committee can be found by visiting the Flathead National Forest Web site at: *www.fs.fed.us/r1/gwj.* Anyone who would like to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by August 1, 2013, to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Wade Muehlhof, Public Affairs Specialist, Flathead National Forest, 650 Wolfpack Way, Kalispell, Montana 59901; Email: *ewmuehlhof@fs.fed.us;* or Facsimile: 406–758–5351.

A summary of the meeting will be posted at *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf* within 21 days of the meeting.

If you are a person requiring resonable accomodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accomodation for access to the facility or procedings by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: July 17, 2013.

Chip Weber,

Forest Supervisor.

[FR Doc. 2013–18111 Filed 7–26–13; 8:45 am]

BILLING CODE 3410–11–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Hampshire Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the New Hampshire Advisory Committee to

the Commission will convene at 12:00 p.m. (EDT) on Monday, August 12, 2013. The purpose of the meeting is for orientation and project planning.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by Thursday, September 12, 2013. Comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, faxed to (202) 376–7548, or emailed to *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at 202–376–7533.

To ensure that the Commission secures an appropriate number of telephone lines for the public, persons are asked to contact the Eastern Regional Office five days before the meeting date either by email at *ero@usccr.gov,* or by phone at 202–376–7533.

Records generated from this meeting may be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone number, email or street address.

The meetings will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Chicago, IL, on July 23, 2013.

David Mussatt,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2013–18024 Filed 7–26–13; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[10–BIS–0002]

Final Decision and Order

In the Matter of:

Chan Heep Loong, 95 Havelock Road, #14–583, Singapore, 160095 SG; Respondent.

This matter is before me upon a Recommended Decision and Order (''RDO'') of an Administrative Law Judge (''ALJ''), as further described below.[1]

I. Background

On February 10, 2010, the Bureau of Industry and Security (''BIS'') issued a Charging Letter alleging that Respondent, Chan Heep Loong, of Singapore (''Loong'' or ''Respondent''), committed three violations of the Export Administration Regulations (''Regulations''),[2] issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420 (2000)) (''Act'').[3] The Charging Letter included the following specific allegations:

Charge 1 15 CFR 764.2(b)—Causing an Export to Iran Without Authorization

From on or about February 14, 2005, through on or about February 24, 2005, Loong caused the doing of an act prohibited by the Regulations. Specifically, Loong caused the export from the United States to Iran, via transshipment through Singapore, of GPS engines, items subject to the Regulations and the Iranian Transaction Regulations (''ITR'') of the Department of the Treasury's Office of Foreign Assets Control (''OFAC''), without the required U.S. Government authorization. Specifically, Loong, in his capacity as Owner/Operator of Tysonic Enterprises (''Tysonic''), of Singapore, ordered and/or bought the GPS engines, items that are classified under Export Control Classification Number (''ECCN'') 7A994 and are controlled for anti-terrorism reasons, from a U.S. company without informing that company of the intended final destination of the items. Loong then instructed the U.S. company to ship the items from the United States to Tysonic in Singapore, and, following arrival in Singapore, the items were then forwarded to Iran. Pursuant to Section 734.2(b)(6) of the Regulations, the export of an item from the United States to a second country intended for transshipment to a third country is deemed to be an export to that third country. Under Section 746.7 of the Regulations, a license from either BIS or OFAC is required to export to Iran items subject to control for anti-terrorism reasons, including items listed under ECCN 7A994. Neither BIS nor OFAC authorized the exports of the items described above to Iran. In engaging in the activity described herein, Loong committed one violation of Section 764.2(b) of the Regulations.

Charge 2 15 CFR 764.2(b)—Causing an Export to Iran Without Authorization

From on or about April 22, 2005, through on or about May 12, 2005, Loong caused the doing of an act prohibited by the Regulations. Specifically, Loong caused the export from the United States to Iran, via transshipment through Singapore, of a peak power meter, an item subject to the Regulations and the Iranian Transaction Regulations (''ITR'') of the Department of the Treasury's Office of Foreign Assets Control (''OFAC''), without the required U.S. Government authorization. Specifically, Loong, in his capacity as Owner/Operator of Tysonic, ordered and/or bought the peak power meter, an item classified under ECCN 3A992 and is controlled for anti-terrorism reasons, from a U.S. company [ ]. Loong then instructed the U.S. company to ship the items from the United States to Tysonic in Singapore, and, following arrival in Singapore, the items were then forwarded to Iran. Pursuant to Section 734.2(b)(6) of the Regulations, the export of an item from the United States to a second country intended for transshipment to a third country is deemed to be an export to that third country. Under Section 746.7 of the Regulations, a license from BIS or OFAC is required to export to Iran items subject to control for anti-terrorism reasons, including items listed under ECCN 3A992. Neither BIS nor OFAC authorized the export of the items described above to Iran. In engaging in the activity described herein, Loong committed one violation of Section 764.2(b) of the Regulations.

Charge 3 15 CFR 764.2(k)—Violation of Terms of an Order Temporarily Denying Export Privileges

On or about August 29, 2006, Loong engaged in conduct prohibited by an Order issued by the Assistant Secretary of Commerce for Export Enforcement on April 12, 2006 pursuant to Section 766.24 of the Regulations, and effective upon publication in the **Federal Register** on April 19, 2006, temporarily denying the export privileges of Loong and Tysonic for 180 days (71 FR 20074, April 19, 2006) (the ''TDO''). Under the terms of the TDO, Loong was prohibited from ''directly or indirectly, participat[ing] in any way in any transaction involving any [item] exported or to be exported from the United States that is subject to the Regulations, or in a[n]y other activity subject to the Regulations [ ], including. . . .[c]arrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations.'' On or about August 29, 2006, Loong, acting through

[1] I received the certified record from the ALJ, including the original copy of the RDO, for my review on June 26, 2013. The RDO is dated June 25, 2013. BIS timely submitted a response to the RDO, while Respondent has not filed a response to the RDO.

[2] The Regulations currently are codified at 15 CFR Parts 730–774 (2013). The charged violations occurred in 2005 and 2006. The Regulations governing the violations at issue are found in the 2005 and 2006 versions of the Code of Federal Regulations. 15 CFR Parts 730–774 (2005–06). The 2013 Regulations establish the procedures that apply to this matter. All citations herein to provisions of Part 766 (Administrative Enforcement Proceedings) are to the 2013 version of the Regulations. All other citations to the Regulations are to the 2005 and 2006 versions of the Regulations, as applicable, unless otherwise indicated. For ease of reference, I note that the 2005, 2006, and 2013 versions of the Regulations are the same with respect to the provisions of Section 764.2 and Part 766 cited herein, while Section 746.7 remains substantively the same in pertinent part.

[3] Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13,222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2012 (77 FR 49,699 (Aug. 16, 2012)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.*) (2006 and Supp. IV 2010).

Rosen Enterprises, ordered and/or bought 30 inverters, items subject to the EAR and designated as EAR99, from a company located in the United States for export from the United States. Rosen Enterprises is owned and operated by Loong and co-located with Tysonic in Singapore. On or about August 29, 2006, the 30 inverters were exported from the United States to Singapore. The TDO continued in force at the time of the aforementioned actions taken by Loong. In engaging in the conduct described herein, Loong committed one violation of Section 764.2(k) of the Regulations.

Charging Letter at 1–3.

In accordance with § 766.3(b)(1) of the Regulations, on February 12, 2010, BIS mailed the notice of issuance of the Charging Letter to Loong at Loong's last known address in Singapore by registered mail. RDO at 2. BIS received a letter from Respondent's legal counsel, Mr. V. Esvaran, Esq., of the firm Esvaran & Tan, of Singapore, on March 4, 2010, indicating that the firm was acting for Loong, who had forwarded the Charging Letter from BIS to Mr. Esvaran and his firm. *Id.* at 2–3. Mr. Esvaran's letter also stated that although the Charging Letter was dated February 12, 2010, Loong was served with the Charging Letter on February 25, 2010. *Id.* at 3.

In March 2010, BIS counsel received an informal request from Respondent's counsel that BIS stipulate to an extension until April 15, 2010 to answer the charges. BIS counsel indicated that BIS would not object to Loongs's request if Loong's counsel entered a notice of appearance and filed the stipulation. *Id.* at 3. No notice of appearance or stipulation of extension of time to file an answer was ever filed. *Id.* Respondent thus was obligated to answer the Charging Letter by no later than March 27, 2010.

On February 27, 2013, BIS counsel sent a letter by email and Federal Express to Respondent's counsel indicating that BIS would file a motion for default order if Respondent did not file an answer as required by the Regulations by March 13, 2013. *Id.* Respondent's counsel provided a letter response by email to BIS counsel on February 28, 2013, acknowledging that Respondent ''has to respond in a format and in compliance with instructions under the regulations,'' and asserting that Respondent would ''revert shortly on the matter.'' *Id.* However, Respondent did not submit an answer by March 13, 2013, or at any time thereafter. *Id.*

Under Section 766.6(a) of the Regulations, the ''respondent must answer the charging letter within 30 days after being served with notice of issuance'' of the charging letter. Section 766.7(a) of the Regulations provides, in turn, that the ''[f]ailure of the respondent to file an answer within the time provided constitutes a waiver of the respondent's right to appear and contest the allegations in the charging letter,'' and that ''on BIS's motion and without further notice to the respondent, [the ALJ] shall find the facts to be as alleged in the charging letter[.]''

On April 15, 2013, BIS filed its Motion for Default Order in accordance with Section 766.7(a) of the Regulations.[4] The Motion for Default Order recommended that Loong be denied export privileges under the Regulations for a period of at least ten years. *Id.* at 7. In addition to the serious nature of Loong's violations, Loong's location in Singapore, BIS indicated that a monetary penalty may be difficult to collect and may not serve a sufficient deterrent effect.

On June 25, 2013, based on the record before him, the ALJ issued the RDO, in which he found Loong in default, found the facts to be as alleged in the Charging Letter, and concluded that Loong had committed the three violations alleged in the charging letter, specifically, two violations of 15 CFR 764.2(b), and one violation of 15 CFR 764.2(k). *Id.* at 7. The RDO contains a detailed review of the facts and applicable law relating to both merits and sanctions issues in this case.

Based on the record, the ALJ determined, *inter alia,* that, between February and April 2005, Loong caused two exports of items subject to the Regulations from the United States to Iran via transshipment through Singapore without the required U.S. Government authorization, in violation of Section 764.2(b) of the Regulations. *Id.* at 7–8. Further, the ALJ determined that after a TDO regarding Loong's U.S. export privileges was issued, Loong used another company he owned and controlled, Rosen Enterprises, to obtain other items subject to the Regulations for export from the United States in direct violation of the terms of the TDO. *Id.*

The ALJ also recommended that the Under Secretary deny Loong's export privileges for a period of ten years, citing, *inter alia,* Loong's ''clear disregard for the Regulations and U.S. export control law, including the long-standing U.S. trade embargo against Iran and the TDO issued against him in April 2006.'' *Id.* at 8. The ALJ further noted that a 10-year denial order was appropriate in this case ''in light of the nature of his conduct, his multiple violations and his location in Singapore.'' *Id.*

[4] Although not required to do so by Section 766.7 of the Regulations a copy of the Motion for Default Order was served on Loong.

II. Review Under Section 766.22

The RDO, together with the entire record in this case, has been referred to me for final action under Section 766.22 of the Regulations. BIS submitted a timely response to the RDO pursuant to Section 766.22(b); however, [Respondent has not submitted a response to the RDO].

I find that the record supports the ALJ's findings of fact and conclusions of law that Respondent never filed an answer, is in default, and committed the three violations of the Regulations as alleged in the Charging Letter and set forth above.

I also find that the ten-year denial order recommended by the ALJ upon his review of the entire record is appropriate, given, as discussed in further detail in the RDO, the nature and number of the violations, the facts of this case, and the importance of deterring Respondent and others from acting to evade the Regulations and otherwise knowingly violate the Regulations.

Accordingly, based on my review of the entire record, I affirm the findings of fact and conclusions of law in the RDO without modification.

Accordingly, it is therefore ordered:

First, that for a period of ten (10) years from the date this Order is published in the **Federal Register**, Chan Heep Loong (''Loong''), with a last known address of 95 Havelock Road, #140583, Singapore, 160095 SG, and his successors and assigns, and when acting for or on its behalf, his employees, representatives, or agents (hereinafter collectively referred to as ''Denied Person'') may not participate, directly or indirectly, in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported

or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to the Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Fifth, that this Order shall be served on the Denied Person and on BIS, and shall be published in the **Federal Register**. In addition, the ALJ's Recommended Decision and Order, except for the section related to the Recommended Order, shall be published in the **Federal Register**.

This Order, which constitutes the final agency action in this matter, is effective upon publication in the **Federal Register**.

Dated: July 21, 2013.

Eric L. Hirschhorn,

Under Secretary of Commerce for Industry and Security.

CERTIFICATE OF SERVICE

I hereby certify that on July 22, 2013, I caused the foregoing Response of the Bureau of Industry and Security to the Administrative Law Judge's Recommended Decision and Order to be sent by Federal Express to:

CHAN HEEP LOONG, 95 HAVELOCK ROAD, #14–583, SINGAPORE, 160095 SG.

And Hand-delivered to:

John T. Masterson, Jr., Esq., Joseph Jest, Esq., Peter Klason, Esq., Attorneys for the Bureau of Industry and Security, Office of Chief Counsel for Industry and Security, U.S. Department of Commerce, 14th & Constitution Avenue NW, Room H–3839, Washington, DC 20230.

,

Kirsten Mortimer,

Office of the Under Secretary for Industry and Security

United States Department of Commerce
Bureau of Industry and Security
Washington, DC 20230

10–BIS–0002

In the Matter of:

Chan Heep Loong, 95 Havelock Road, #14–583, Singapore, 160095 SG; Respondent.

Order Granting Motion for Default and Recommended Decision and Order

On February 12, 2010, the Bureau of Industry and Security (BIS), U.S. Department of Commerce, issued a charging letter initiating this administrative enforcement proceeding against Chan Heep Loong (Loong or Respondent).

The charging letter alleged that Chan Heep Loong, as Owner/Operator of Tysonic Enterprises (Tysonic) committed three (3) violations of the Export Administration Regulations (Regulations) (*See* 15 CFR Parts 730–774 (2008))[5]. The Regulations were issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420 (2000)) (Act).[6] In accordance with Section 766.7 of the Regulations, BIS moved for the issuance of an Order of Default against Chan Heep Loong in connection with Charges 1, 2 and 3 in the charging letter, as Chan Heep Loong failed to file an Answer to the allegations contained in the charging letter within the time period required by law.

A. Legal Authority for Issuing an Order of Default

Section 766.7 of the Regulations states upon Motion by BIS, the Court shall enter a judgment of default if a respondent fails to file a timely answer to the charging letter. That section, entitled Default, provides in pertinent part as follows:

> Failure of the respondent to file an answer within the time provided constitutes a waiver of the respondent's right to appear and contest the allegations in the charging letter. In such event, the administrative law judge, on BIS' motion and without further notice to the respondent, shall find the facts to be as alleged in the charging letter and render an initial or recommended decision containing findings of fact and appropriate conclusions of law and issue or recommend an order imposing appropriate sanctions. 15 CFR 766.7 (2008).

Pursuant to § 766.6 of the Regulations, a respondent must file an answer to the charging letter ''within 30 days after being served with notice of the issuance of the charging letter'' initiating the proceeding.

B. Service of the Notice of Issuance of Charging Letter

Section 766.3(b)(1) of the Regulations provides notice of the issuance of a charging letter shall be served on a respondent by mailing a copy by registered or certified mail addressed to the respondent at the respondent's last known address. On February 12, 2010, BIS mailed the notice of issuance of a charging letter by registered mail to Chan Heep Loong at his last known address in Singapore. *See* Gov't Ex. 1. Pursuant to Section 766.3(c) of the Regulations, the date of service in this case is the date of delivery. After mailing the Charging Letter to Chan Heep Loong at his last known address, BIS received a letter from Respondent's legal counsel, Mr. V. Esvaran, Esq., of the firm of Esvaran & Tan, of Singapore, on March 4, 2010, indicating the firm was acting for Tysonic Enterprises and

[5] The charges are for violations that are alleged to have occurred during 2005 and 2006. The Regulations governing the violations at issue are found in the 2005 and 2006 versions of the Code of Federal Regulations (15 CFR Parts 730–774 (2005–06)). The 2013 Regulations establish the procedures that apply to this matter.

[6] Since August 21, 2001, the Export Administration Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2012 (77 FR 49699 (Aug. 16, 2012)), continues the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2006 and Supp. IV 2010)).

Respondent Chan Heep Loong who had forwarded the Charging Letter from the Agency to Mr. Esvaran and his firm. *See* Gov't Ex. 3. Mr. Esvaran's letter also stated that although the Charges are dated February 12, 2010 his clients were served with the Charges on February 25, 2010. *Id.* I find that BIS properly served the Charging Letter in accordance with 15 CFR 766.3(b).

In March of 2010, BIS counsel received an informal request from Respondent's counsel requesting BIS stipulate to an extension until April 15, 2010 to answer the charges. Agency counsel indicated BIS would not object if Respondent's counsel entered a notice of appearance and the necessary stipulation. *See* Gov't Ex. 4. However, no notice of appearance, motion, or stipulation for an extension has been filed. To date, Respondent has not filed an answer.

On February 27, 2013, BIS counsel sent a letter by email (and Federal Express) to Respondent's counsel indicating that BIS would file a motion for a default order if Respondent did not file an answer as required by the regulations with the Docketing Center by March 13, 2013. *See* Gov't Ex. 5; 15 CFR 766.5 and 766.6.

Respondent's counsel provided a letter response by email to BIS on February 28, 2013, acknowledging that Respondent ''has to respond in a format and in compliance with instructions under the requisite regulations,'' and asserting that Respondent would ''revert shortly on the matter.'' *See* Gov't Ex. 6. However, Respondent did not submit an answer on March 13, 2013 or at any time thereafter. On April 15, 2013, BIS filed a Motion for Default Order.

Under Section 766.6(a) of the Regulations, a respondent must file an answer to the charging letter within 30 days after being served with notice of issuance of the charging letter initiating the administrative enforcement proceeding. Respondent originally had 30 days from February 25, 2010, to file an answer to the charging letter. As noted above, on February 27, 2013 BIS provided notice to Respondent of another opportunity to file an answer by March 13, 2013 and that failure to answer would result in submission of a default motion by BIS. To date, Respondent has not filed an answer.

C. Summary of Violations Charged

The charging letter filed by BIS included a total of three charged violations. Two violations concerned causing unauthorized exports to Iran, via transshipment through Singapore, of items controlled under the Regulations on anti-terrorism grounds; and one charge for violating an Order issued by the Assistant Secretary of Commerce for Export Enforcement on April 12, 2006 temporarily denying export privileges (TDO) of Loong and Tysonic for 180 days. (71 FR 20074, April 19, 2006).

Specifically, Charge 1 alleges from on or about February 14, 2005, through on or about February 24, 2005, Loong violated Section 764.2(b)(Causing, Aiding or Abetting a Violation) of the Regulations by causing the export of GPS engines to Iran, via transshipment through Singapore, without the required license. Acting through Tysonic Enterprises, a Singapore company Loong owned and operated, Loong ordered and/or bought the GPS engines, items classified on the Commerce Control List under Export Control Classification Number (ECCN) 7A994 and controlled for anti-terrorism reasons, from a U.S. company without informing that company that Iran was the intended final destination of the items. 7 Loong instead instructed the U.S. company to ship the items from the United States to Tysonic in Singapore, and following their arrival in Singapore, the items were forwarded to Iran. Pursuant to Section 734.2(b)(6) of the Regulations, the export of an item from the United States to a second country, such as Singapore, intended for transshipment to a third country, such as Iran, constitutes an export to that third country. Charge 1 further alleges that under Section 746.7 of the Regulations, a license from either BIS or the Treasury Department's Office of Foreign Assets Control (OFAC) was required to export these items to Iran, and that neither BIS nor OFAC authorized these exports to Iran. *See* Charging Letter; Gov. Ex. 1.

Charge 2 alleges from on or about April 22, 2005, through on or about May 12, 2005, Loong violated Section 764.2(b)(Causing, Aiding or Abetting a Violation) of the Regulations by causing the export of a peak power meter to Iran, via transshipment through Singapore, without the license required under Section 746.7 of the Regulations. Acting through Tysonic Enterprises, a Singapore company Loong owned and operated, Loong ordered and/or bought the peak power meter, an item classified on the Commerce Control List under ECCN 3A992 and controlled for anti-terrorism reasons, from a U.S. company without informing that company that Iran was the intended final destination of the item. Loong instead instructed the U.S. company to ship the item from the United States to Tysonic in Singapore, and following their arrival in Singapore, the items were forwarded to Iran. Pursuant to Section 734.2(b)(6) of the Regulations, the export of an item from the United States to a second country, such as Singapore, intended for transshipment to a third country, such as Iran, constitutes an export to that third country. Charge 2 further alleges that under Section 746.7 of the Regulations, a license from either BIS or OFAC was required to export this item to Iran, and that neither BIS nor OFAC authorized this export to Iran. *See* Charging Letter; Gov. Ex. 1.

Charge 3 alleges from on or about August 29, 2006, Loong, acting through Rosen Enterprises, violated Section 764.2(k)(Violation of Terms of an Order Temporarily Denying Export Privileges) of the Regulations by purchasing 30 inverters, items subject to the EAR and designated as EAR99, from a company located in the United States for export from the United States. Rosen Enterprises is owned and operated by Loong and co-located with Tysonic Enterprises in Singapore. On or about August 29, 2006, the 30 inverters were exported from the United States to Singapore. The TDO continued in force at the time of these export actions taken by Respondent Loong. In engaging in these actions Loong committed one violation of Section 764.2(k) of the Regulations.

D. Penalty Recommendation

Pursuant to the default procedures set forth in § 766.7 of the Regulations, I find the allegations contained in the charging letter to be fact; and hereby determine that those facts establish Chan Heep Loong committed two violations of § 764.2(b) of the Regulations and one violation of Section 764.2(k) of the Regulations.

Section 764.3 of the Regulations establishes the sanctions BIS may seek for the violations charged in this proceeding. Sanctions potentially sought in this case include a civil monetary penalty, suspension from practice before the Department of Commerce, and a denial of export privileges under the Regulations. *See* 15 CFR 764.3.

BIS requests I recommend to the Under Secretary of Commerce for Industry and Security that Chan Heep Loong's export privileges under the Regulations be denied for ten (10) years.[8] BIS believes that imposition of a civil penalty in this case would be ineffective and argues that a denial is justified because of the nature of Chan

[8] Pursuant to Section 13(c)(1) of the Act and § 766.17(b)(2) of the Regulations, in export control enforcement cases, the Administrative Law Judge issues a recommended decision and order which is reviewed by the Under Secretary, who issues the final agency decision in the case.

Heep Loong's multiple violations and his demonstrated disregard for U.S. export control laws including the long-standing U.S. trade embargo against Iran and a TDO issued against him by BIS. Specifically, between February and April 2005, Loong caused two exports of items subject to the Regulations from the United States to Iran [9] via transshipment through Singapore without the required U.S. Government authorization, in violation of Section 764.2(b) of the Regulations, 15 CFR 764.2(b). *See* Charging Letter, Gov't Ex. 1, at Charges 1–2. Loong failed to inform the U.S. exporters that the intended final destination of the items was Iran, and instead instructed the exporters to ship the items from the United States to Tysonic in Singapore. Following the arrival of these items in Singapore, the items were forwarded on to Iran. These actions by Loong constitute two violations of Section 764.2(b) of the Regulations. *Id.*

BIS further notes Loong's actions in August 2006 were a clear violation of the TDO BIS issued against him (and Tysonic) on April 12, 2006.

Further, BIS asserts that a denial is justified in this case because Loong remains in Singapore, therefore a monetary penalty may be difficult to collect and would not serve a sufficient deterrent effect. In light of these circumstances, BIS requests the Court to recommend denial of Loong's export privileges for ten years as an appropriate sanction.

I agree that the facts set forth in the Charging Letter show that Loong engaged in conduct that demonstrated a clear disregard for the Regulations and U.S. export control laws, including the long-standing U.S. trade embargo against Iran and the TDO issued against him in April 2006. In addition, the facts show that to facilitate the purchase and unlawful export of the items at issue in Charges 1 and 2, Loong failed to inform the U.S. exporters that Iran, not Singapore, was the intended final destination for the anti-terrorism controlled items at issue. Likewise, after the TDO regarding Loong and Tysonic's U.S. export privileges was issued, Loong used another company he owned and controlled, Rosen Enterprises, to obtain other items subject to the Regulations for export from the United States in direct violation of the terms of the TDO.

I agree that Loong's unlawful conduct calls for a significant sanction and recommend as an appropriate sanction the denial of Loong's export privileges for a period of ten (10) years, in light of the nature of his conduct, his multiple violations, and his location in Singapore. The imposition of a 10-year denial order as a sanction is also consistent with BIS precedent. *See* e.g. *In the Matter of: Teepad Electronic General Trading,* 71 FR 34596 (June 15, 2006) Ten (10) year denial order imposed against a defaulting respondent located in the United Arab Emirates (UAE) for conspiring to export anti-terrorism controlled telecommunications devices without the required licenses to Iran, via transshipment through UAE, aiding and abetting the unlicensed export of such items to Iran on two occasions, and committing knowledge violations in connection with those two exports. See also *In the Matter of: Aqua-Loop Cooling Towers, Co.,* 75 FR 16732 (Apr. 2, 2010). In view of the above facts and analysis I find Respondent's misconduct exhibited a disregard for the Regulations and U.S. export controls, and that a monetary penalty is not likely to be an effective deterrent in this case. Given the foregoing, and consistent with BIS precedent, I recommend, pursuant to Section 766.7(a), that the Under Secretary of Commerce for Industry and Security enter an Order denying Chan Heep Loong's export privileges for a period of ten (10) years.

Using provisions from the Standard Terms of Orders Denying Export Privileges set forth in Supplement No. 1 to Part 764 of the Regulations (Supp. No. 1 to 15 CFR Part 764), I recommend that the Under Secretary issue a Denial Order against Chan Heep Loong as follows:

[REDACTED SECTION]

[REDACTED SECTION]

[REDACTED SECTION]

[REDACTED SECTION]

Within thirty (30) days after receipt of this Recommended Decision and Order, the Under Secretary shall issue a written order affirming, modifying, or vacating this Recommended Decision and Order. *See* 15 CFR 766.22(c). A copy of the Agency Regulations for Review by the Under Secretary can be found as *Attachment A.*

Hon Michael J. Devine,

Administrative Law Judge United States Coast Guard

Done and dated this 25th day of June, 2013, Baltimore, Maryland

ATTACHMENT A

NOTICE TO THE PARTIES REGARDING REVIEW BY UNDER SECRETARY

TITLE 15—COMMERCE AND FOREIGN TRADE SUBTITLE B—REGULATIONS RELATING TO COMMERCE AND FOREIGN TRADE

CHAPTER VII—BUREAU OF INDUSTRY AND SECURITY, DEPARTMENT OF COMMERCE

SUBCHAPTER C—EXPORT ADMINISTRATION REGULATIONS

PART 766—ADMINISTRATIVE ENFORCEMENT PROCEEDINGS

15 CFR 766.22

§ 766.22 Review by Under Secretary.

(a) *Recommended decision.* For proceedings not involving violations relating to part 760 of the EAR, the administrative law judge shall immediately refer the recommended decision and order to the Under Secretary. Because of the time limits provided under the EAA for review by the Under Secretary, service of the recommended decision and order on the parties, all papers filed by the parties in response, and the final decision of the Under Secretary must be by personal delivery, facsimile, express mail or other overnight carrier. If the Under Secretary cannot act on a recommended decision and order for any reason, the Under Secretary will designate another Department of Commerce official to receive and act on the recommendation.

(b) *Submissions by parties.* Parties shall have 12 days from the date of issuance of the recommended decision and order in which to submit simultaneous responses. Parties thereafter shall have eight days from receipt of any response(s) in which to submit replies. Any response or reply must be received within the time specified by the Under Secretary.

(c) *Final decision.* Within 30 days after receipt of the recommended decision and order, the Under Secretary shall issue a written order affirming, modifying or vacating the recommended decision and order of the administrative law judge. If he/she vacates the recommended decision and order, the Under Secretary may refer the case back to the administrative law judge for further proceedings. Because of the time limits, the Under Secretary's review will ordinarily be limited to the written record for decision, including the transcript of any hearing, and any submissions by the parties concerning the recommended decision.

[9] Pursuant to 15 CFR 734.2(b)(6) the export of items from the United States to a second country, intended for transshipment to a third country is deemed to be an export to the third country.

(d) *Delivery.* The final decision and implementing order shall be served on the parties and will be publicly available in accordance with § 766.20 of this part.

[61 FR 12907, Mar. 25, 1996, as amended at 75 FR 33683, June 15, 2010]

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing RECOMMENDED DECISION AND ORDER as indicated below:

Mr. Eric H. Hirschhorn,
Under Secretary for Industry and Security, Bureau of Industry and Security, U.S. Department of Commerce, Room H–3838, 14th Street & Constitution Avenue, N.W., Washington, DC 20230, Phone: (202) 482–1460

Sent by Federal Express courier

Chan Heep Loong,
95 Havelock Road, #14–583, Singapore, 160095 SG

Sent by Federal Express courier

Hearing Docket Clerk,
United States Coast Guard, ALJ Dockering Center, 40 S. Gay Street, Room 414, Baltimore, MD 21202, Telephone: (410) 962–51'00, Fax: (410) 962–1746

Sent by Hand Delivery

Peter Klason, Esq.,
Attorney-Advisor, Office of Chief Counsel for Ind. & Security, U.S. Dept. of Commerce, Room H–3839, 14th Street & Constitution Avenue, NW., Washington, DC 20230, Phone: (202) 482–5301, Fax: (202) 482–0085

Sent by Facsimile

Jenny L. Collins,
Paralegal Specialist for the Administrative Law Judge

Done and dated this 25th day of June, 2013 Baltimore, Maryland.

[FR Doc. 2013–18078 Filed 7–26–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–858, C–489–817]

Certain Oil Country Tubular Goods From India and Turkey: Initiation of Countervailing Duty Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce

DATES: *Effective Date:* July 29, 2013.

FOR FURTHER INFORMATION CONTACT: Sean Carey at (202) 482–3964 (India); Shane Subler at (202) 482–0189 (Turkey), AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION

The Petitions

On July 2, 2013, the Department of Commerce (''the Department'') received countervailing duty (''CVD'') petitions concerning imports of certain oil country tubular goods (''OCTG'') from India and the Republic of Turkey (''Turkey''), filed in proper form on behalf of United States Steel Corporation, Vallourec Star L.P., TMK IPSCO, Energex (division of JMC Steel Group), Northwest Pipe Company, Tejas Tubular Products, Welded Tube Company, Boomerang Tube LLC, and Maverick Tube Corporation (collectively, ''the petitioners''). The CVD petitions were accompanied by nine antidumping duty (AD) petitions.[1] The petitioners are domestic producers of OCTG. On July 8, 2013, the Department requested information and clarification for certain areas of the Petitions.[2] The petitioners filed responses to these requests on July 12, 2013,[3] July 15, 2013,[4] and July 16, 2013.[5]

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (''the Act''), the petitioners allege that the Governments of India and Turkey are providing countervailable subsidies (within the meaning of sections 701 and 771(5) of the Act) to imports of certain OCTG from India and Turkey, and that such imports are materially injuring, and threaten to further cause material injury to, the domestic industry producing OCTG in the United States pursuant to section 701 of the Act. The Department finds that the petitioners filed the Petitions on behalf of the domestic industry because the petitioners are interested parties as defined in section 771(9)(C) of the Act, and that the petitioners have demonstrated sufficient industry support with respect to the initiation of the investigations the petitioners are requesting.[6]

Period of Investigations

The period of the investigations is January 1, 2012, through December 31, 2012.

Scope of Investigations

The product covered by these CVD investigations is certain OCTG from India and Turkey. For a full description of the scope of these investigations, *see* the ''Scope of Investigations'' in Appendix I to this notice.

Comments on Scope of Investigations

During our review of the petitions, the Department issued questions to, and received responses from, the petitioners pertaining to the proposed scope to ensure that the scope language in the Petitions would be an accurate reflection of the products for which the domestic industry is seeking relief. As discussed in the preamble to the regulations,[7] we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages interested parties to submit such comments by 5:00 p.m. EST on August 12, 2013.[8] All comments must be filed on the records of the India and Turkey CVD investigations, as well as the concurrent India, Korea, Philippines, Saudi Arabia, Taiwan, Thailand, Turkey, Ukraine, and Vietnam AD investigations.

Filing Requirements

All submissions to the Department must be filed electronically using Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). An electronically filed document must be received successfully in its entirety by the time and date noted above. Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper

[1] *See* Petitions for the Imposition of Antidumping Duties on Imports of Certain Oil Country Tubular Goods from India, the Republic of Korea, the Republic of the Philippines, Saudi Arabia, Taiwan, Thailand, the Republic of Turkey, Ukraine, and the Socialist Republic of Vietnam and Countervailing Duties on Imports of Certain Oil Country Tubular Goods from India and the Republic of Turkey, dated July 2, 2013 (Petitions). Neither Maverick Tube Corporation nor Vallourec Star L.P. is participating in the petition against Saudi Arabia.

[2] *See* Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Oil Country Tubular Goods from India and the Republic of Turkey and Antidumping Duties on Imports of Certain Oil Country Tubular Goods from the Republic of Korea, the Republic of the Philippines, Saudi Arabia, Taiwan, Thailand, Ukraine, and the Socialist Republic of Vietnam: Supplemental Questions, dated July 8, 2013.

[3] *See* General Issues Supplement to the Petitions, dated July 12, 2013 (General Issues Supplement) and Turkey Supplement to the CVD Petition, dated July 12, 2013.

[4] *See* Turkey Supplement to the CVD Petition, dated July 15, 2013.

[5] *See* India Supplement to the CVD Petition, dated July 16, 2013.

[6] *See* ''Determination of Industry Support for the Petitions'' below.

[7] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997).

[8] Twenty calendar days from the signature date of this notice is August 11, 2013, which is a Sunday. Accordingly, we are setting the deadline on the next business day.

form) with the Import Administration's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, and stamped with the date and time of receipt by the deadline noted above.[9]

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the Government of India (''GOI'') and the Government of Turkey (''GOT'') for consultations with respect to the Petitions.[10] Consultations were held with the GOT on July 19, 2013.[11] All memoranda are on file electronically via IA ACCESS.[12]

Determination of Industry Support for the Petitions

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the industry.

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. 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 U.S. 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,[13] 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.[14]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioners do not offer a definition of 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 OCTG, as defined in the scope of the investigations, constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product.[15]

In determining whether the petitioners have standing under section 702(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 Investigations'' section above. To establish industry support, the petitioners provided their production of the domestic like product in 2012, and compared this to the estimated total production of the domestic like product for the entire domestic industry.[16] The petitioners estimated total 2012 production of the domestic like product using domestic shipment data for the OCTG industry adjusted by the ratio of the petitioners' production to domestic shipments.[17]

On July 10, 2013, we received a submission from EVRAZ Rocky Mountain Steel (''Evraz''), a domestic producer of OCTG. In the submission, Evraz states that it supports the AD and CVD petitions on OCTG from India, the Philippines, Saudi Arabia, South Korea, Taiwan, Thailand, Turkey, Ukraine, and Vietnam. In addition, Evraz provided its 2012 production of the domestic like product.[18]

We have relied upon data the petitioners and Evraz provided for purposes of measuring industry support.[19]

Based on information provided in the Petitions, supplemental submissions, and other information readily available to the Department, we determine that the petitioners have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act for all of the petitions 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.[20] Based on information provided in the Petitions and other submissions, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the 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. Accordingly, the Department determines that the Petitions were filed on behalf of the domestic industry

[9] *See http://www.gpo.gov/fdsys/pkg/FR–2011–07–06/pdf/2011–16352.pdf* for details of the Department's Electronic Filing Requirements, which went into effect on August 5, 2011. Information regarding IA ACCESS assistance can be found at *https://iaaccess.trade.gov/help.aspx* and a handbook can be found at *https://iaaccess.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf.*

[10] *See* Letter of Invitation Regarding Countervailing Duty Petition on Certain Oil Country Tubular Goods from India, dated July 3, 2013; *see also* Memorandum to the File, ''Countervailing Duty Petition on Oil Country Tubular Goods from India: Contact with the Indian Embassy,'' dated July 8, 2013. While the Department invited the GOI to consultations, the GOI did not respond. *See* Letter of Invitation Regarding Countervailing Duty Petition on Certain Oil Country Tubular Goods from the Republic of Turkey, dated July 2, 2013.

[11] *See* Ex-Parte Memorandum, ''Consultations with Officials from the Government of the Republic of Turkey on the Countervailing Duty Petition regarding Certain Oil Country Tubular Goods from the Republic of Turkey,'' dated July 22, 2013.

[12] *See supra* note 8 for information pertaining to IA ACCESS.

[13] *See* section 771(10) of the Act.

[14] *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)).

[15] *See* Countervailing Duty Investigation Initiation Checklist: Oil Country Tubular Goods from India (''India CVD Initiation Checklist''), at Attachment II, and Countervailing Duty Investigation Initiation Checklist: Oil Country Tubular Goods from the Republic of Turkey (''Turkey CVD 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, Room 7046 of the main Department of Commerce building.

[16] *See* Volume I of the Petitions, 3–4 and Exhibit I–3.

[17] *Id.*

[18] *See* Letter from EVRAZ Rocky Mountain Steel, dated July 10, 2013, at 1–2.

[19] *See* India CVD Initiation Checklist and Turkey CVD Initiation Checklist, at Attachment II.

[20] *Id.*

within the meaning of section 702(b)(1) of the Act.[21]

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 CVD investigations that they are requesting the Department initiate.[22]

Injury Test

Because India and Turkey are ''Subsidies Agreement Countries'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to these investigations. Accordingly, the ITC must determine whether imports of the subject merchandise from India and Turkey materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioners allege that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act. The petitioners further submit that subject imports from India exceed the negligibility threshold provided under section 771(24)(B) of the Act, which states that in CVD petitions, imports of subject merchandise from developing countries must exceed the negligibility threshold of four percent.[23]

The petitioners contend that the industry's injured condition is illustrated by reduced market share; underselling and price depression or suppression; lost sales and revenues; stunted production, shipments, and capacity utilization; hindered growth in employment-related variables; and decline in financial performance.[24] 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.[25]

[21] *Id.*

[22] *Id.*

[23] *See* General Issues Supplement, at 7–8 and Exhibit Supp. I–66.

[24] *See* Volume I of the Petitions, at 17–64 and Exhibits I–6 and I–8 through I–54; *see also* General Issues Supplement, at 8–9.

[25] *See* India CVD Initiation Checklist, at Attachment III; *see also* Turkey CVD Initiation Checklist, at Attachment III.

Initiation of Countervailing Duty Investigations

Section 702(b)(1) of the Act requires the Department to initiate a CVD investigation whenever an interested party files a CVD petition on behalf of an industry that: (1) alleges the elements necessary for an imposition of a duty under section 701(a) of the Act; and (2) is accompanied by information reasonably available to the petitioner supporting the allegations. In the Petitions, the petitioners allege that producers of OCTG in India and Turkey benefited from countervailable subsidies bestowed by their respective governments. The Department has examined the Petitions and finds that they comply with the requirements of section 702(b)(1) of the Act. Therefore, in accordance with section 702(b)(1) of the Act, we are initiating CVD investigations to determine whether manufacturers, producers, or exporters of OCTG from India and Turkey receive countervailable subsidies from their respective governments.

India

Based on our review of the Petitions, we find that there is sufficient information to initiate a CVD investigation of 60 alleged programs. For a full discussion of the basis for our decision to initiate or not initiate on each program, *see* India CVD Initiation Checklist.

Turkey

Based on our review of the Petitions, we find that there is sufficient information to initiate a CVD investigation of 16 alleged programs. For three of these programs, however, we find that there is sufficient evidence to initiate on part of the allegation, but not sufficient evidence to initiate on another part of the allegation. For a full discussion of the basis for our decision to initiate or not initiate on each program, *see* Turkey CVD Initiation Checklist.

A public version of the initiation checklist for each investigation is available on IA ACCESS and at *http://ia.ita.doc.gov/ia-highlights-and-news.html*.

Respondent Selection

For these investigations, the Department expects to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports of subject merchandise during the period of investigation under the following Harmonized Tariff Schedule of the United States numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.31.10, 7304.29.31.20, 7304.29.31.30, 7304.29.31.40, 7304.29.31.50, 7304.29.31.60, 7304.29.31.80, 7304.29.41.10, 7304.29.41.20, 7304.29.41.30, 7304.29.41.40, 7304.29.41.50, 7304.29.41.60, 7304.29.41.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.61.15, 7304.29.61.30, 7304.29.61.45, 7304.29.61.60, 7304.29.61.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.29.10.30, 7306.29.10.90, 7306.29.20.00, 7306.29.31.00, 7306.29.41.00, 7306.29.60.10, 7306.29.60.50, 7306.29.81.10, and 7306.29.81.50.

We intend to release the CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO shortly after the announcement of these case initiations. Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on the Department's Web site at *http://ia.ita.doc.gov/apo*.

Interested parties may submit comments regarding the CBP data and respondent selection by 5:00 p.m. EST on the seventh calendar day after publication of this notice. Comments must be filed in accordance with the filing requirements stated above. We intend to make our decision regarding respondent selection within 20 days of publication of this notice.

Distribution of Copies of the Petitions

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f), copies of the public version of the Petitions have been provided to the representatives of the GOI and GOT. Because of the particularly large number of producers/exporters identified in the Petitions, the Department considers the service of the public version of the Petitions to the foreign producers/exporters satisfied by the delivery of the public versions of the Petitions to the GOI and GOT, consistent with 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petitions were filed, whether there is a reasonable indication that imports of OCTG from India and Turkey are materially injuring, or threatening material injury to, a U.S. industry.[26] 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 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.

[26] *See* section 703(a) of the Act.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[27] Parties are hereby reminded that revised certification requirements are in effect for company/government officials, as well as their representatives, in all segments of any AD or CVD proceedings initiated on or after March 14, 2011.[28] The formats for the revised certifications are provided at the end of the *Interim Final Rule.* Foreign governments and their officials may continue to submit certifications in either the format that was in use prior to the effective date of the *Interim Final Rule,* or in the format provided in the *Interim Final Rule.*[29] The Department intends to reject factual information submissions if the submitting party does not comply with the revised certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO 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 (January 22, 2008). Parties wishing to participate in either investigation should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: July 22, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix I

Scope of the Investigations

The merchandise covered by the investigations is certain oil country tubular goods (''OCTG''), which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.,* whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (''API'') or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of the investigations also covers OCTG coupling stock.

Excluded from the scope of the investigations are: casing or tubing containing 10.5 percent or more by weight of chromium; drill pipe; unattached couplings; and unattached thread protectors.

The merchandise subject to the investigations is currently classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.31.10, 7304.29.31.20, 7304.29.31.30, 7304.29.31.40, 7304.29.31.50, 7304.29.31.60, 7304.29.31.80, 7304.29.41.10, 7304.29.41.20, 7304.29.41.30, 7304.29.41.40, 7304.29.41.50, 7304.29.41.60, 7304.29.41.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.61.15, 7304.29.61.30, 7304.29.61.45, 7304.29.61.60, 7304.29.61.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.29.10.30, 7306.29.10.90, 7306.29.20.00, 7306.29.31.00, 7306.29.41.00, 7306.29.60.10, 7306.29.60.50, 7306.29.81.10, and 7306.29.81.50.

The merchandise subject to the investigations may also enter under the following HTSUS item numbers: 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.39.00.76, 7304.39.00.80, 7304.59.60.00, 7304.59.80.15, 7304.59.80.20, 7304.59.80.25, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, 7304.59.80.70, 7304.59.80.80, 7305.31.40.00, 7305.31.60.90, 7306.30.50.55, 7306.30.50.90, 7306.50.50.50, and 7306.50.50.70.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigations is dispositive.

[27] *See* section 782(b) of the Act.

[28] *See Certification of Factual Information for Import Administration during Antidumping and Countervailing Duty Proceedings: Interim Final Rule,* 76 FR 7491 (February 10, 2011) (*Interim Final Rule*), amending 19 CFR 351.303(g)(1) and (2).

[29] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Supplemental Interim Final Rule,* 76 FR 54697 (September 2, 2011).

[FR Doc. 2013–18165 Filed 7–26–13; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–857, A–580–870, A–565–802, A–517–804, A–583–850, A–549–832, A–489–816, A–823–815, A–552–817]

Certain Oil Country Tubular Goods from India, the Republic of Korea, the Republic of the Philippines, Saudi Arabia, Taiwan, Thailand, the Republic of Turkey, Ukraine, and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* July 29, 2013.

FOR FURTHER INFORMATION CONTACT: Emily Halle at (202) 482–0176 (India); Victoria Cho at (202) 482–5075 (Korea); Dmitry Vladimirov at (202) 482–0665 (the Philippines); Jason Rhoads at (202) 482–0123 (Saudi Arabia); Thomas Schauer at (202) 482–0410 (Taiwan); Yasmin Nair at (202) 482–3813 (Thailand); Catherine Cartsos at (202) 482–1757 (Turkey); David Lindgren at (202) 482–3870 (Ukraine); or Fred Baker at (202) 482–2924 (Vietnam), AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petitions

On July 2, 2013, the Department of Commerce (the Department) received antidumping duty (AD) petitions concerning imports of certain oil country tubular goods (OCTG) from India, the Republic of Korea (Korea), the Republic of the Philippines (the Philippines), Saudi Arabia, Taiwan, Thailand, the Republic of Turkey (Turkey), Ukraine, and the Socialist Republic of Vietnam (Vietnam) filed in proper form on behalf of United States Steel Corporation, Vallourec Star L.P., TMK IPSCO, Energex (division of JMC Steel Group), Northwest Pipe Company, Tejas Tubular Products, Welded Tube USA Inc., Boomerang Tube LLC, and Maverick Tube Corporation (collectively, the petitioners). The AD petitions were accompanied by two countervailing duty (CVD) petitions.[1] The petitioners are domestic producers of OCTG. On July 8, 2013, the Department requested additional information and clarification of certain areas of the petitions.[2] The petitioners filed responses to these requests on July 12, 2013, and a further response with respect to Korea on July 15, 2013.[3]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that imports of OCTG from India, Korea, the Philippines, Saudi Arabia, Taiwan, Thailand, Turkey, Ukraine, and Vietnam 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.

Periods of Investigations

Because the petitions were filed on July 2, 2013, the period of investigation (POI) for the Vietnam investigation is January 1, 2013, through June 30, 2013. The POI for the India, Korea, the Philippines, Saudi Arabia, Taiwan, Thailand, Turkey, and Ukraine investigations is July 1, 2012, through June 30, 2013.[4]

Scope of the Investigations

The product covered by these investigations is OCTG from India, Korea, the Philippines, Saudi Arabia, Taiwan, Thailand, Turkey, Ukraine, and Vietnam. 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, the Department issued questions to, and received responses from, the petitioners pertaining to the proposed scope to ensure that the scope language in the petitions would be an accurate reflection of the products for which the domestic industry is seeking relief. As discussed in the preamble to the regulations,[5] 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 August 12, 2013, 5:00 p.m. Eastern Time.[6] All comments must be filed on the records of the India, Korea, the Philippines, Saudi Arabia, Taiwan, Thailand, Turkey, Ukraine, and Vietnam AD investigations as well as the concurrent India and Turkey CVD investigations.

Filing Requirements

All submissions to the Department must be filed electronically using Import Administration's Antidumping Countervailing Duty Centralized Electronic Service System (IA ACCESS).[7] An electronically filed document must be received successfully in its entirety 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.

Comments on Product Characteristics for Antidumping Duty Questionnaires

The Department requests comments from interested parties regarding the appropriate physical characteristics of OCTG to be reported in response to the Department's antidumping duty 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

[1] *See* Petitions for the Imposition of Antidumping and Countervailing Duties: Certain Oil Country Tubular Goods from India, the Republic of Korea, the Republic of the Philippines, Saudi Arabia, Taiwan, Thailand, the Republic of Turkey, Ukraine, and the Socialist Republic of Vietnam, dated July 2, 2013 (petitions). Neither Maverick Tube Corporation nor Vallourec Star L.P. is participating in the petition against Saudi Arabia.

[2] *See* letter from the Department to the petitioners entitled ''Re: Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Oil Country Tubular Goods from India and the Republic of Turkey and Antidumping Duties on Imports of Certain Oil Country Tubular Goods from the Republic of Korea, the Republic of the Philippines, Saudi Arabia, Taiwan, Thailand, Ukraine, and the Socialist Republic of Vietnam: Supplemental Questions'' dated July 8, 2013, and letters from the Department to the petitioners entitled ''Petition for the Imposition of Antidumping Duties on Imports of Oil Country Tubular Goods from {country}: Supplemental Questions'' on each of the country-specific records dated July 8, 2013.

[3] *See* Supplement to all Petitions dated July 12, 2013 (General Issues Supplement), Supplement to the India Petition dated July 12, 2013, Supplements to the Korea Petition dated July 12, 2013, and July 15, 2013, Supplement to the Philippines Petition dated July 12, 2013, Supplement to the Saudi Arabia Petition dated July 12, 2013, Supplement to the Taiwan Petition dated July 12, 2013, Supplement to the Thailand Petition dated July 12, 2013, Supplement to the Turkey Petition dated July 12, 2013, Supplement to the Ukraine Petition dated July 12, 2013, and Supplement to the Vietnam Petition, dated July 12, 2013.

[4] *See* 19 CFR 351.204(b)(1).

[5] *Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[6] Twenty calendar days from the signature date of this notice is August 11, 2013, which is a Sunday. Accordingly, we are setting the deadline on the next business day.

[7] *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.*

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 OCTG, 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 August 5, 2013. Rebuttal comments must be received by August 12, 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 U.S. 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,[8] 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.[9]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioners do not offer a definition of 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 OCTG, as defined in the scope of the investigations, constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product.[10]

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 Investigations'' section above. To establish industry support, the petitioners provided their production of the domestic like product in 2012, and compared this to the estimated total production of the domestic like product for the entire domestic industry.[11] The petitioners estimated total 2012 production of the domestic like product using domestic shipment data for the OCTG industry adjusted by the ratio of the petitioners' production to domestic shipments.[12] Maverick Tube Corporation and Vallourec Star L.P. are not the petitioners with respect to the petition for the imposition of ADs on imports of OCTG from Saudi Arabia and both companies state that they take no position with regard to the petition on imports from Saudi Arabia;[13] therefore, the petitioners provided a separate industry support calculation for the Saudi Arabia petition.[14]

On July 10, 2013, we received a submission from EVRAZ Rocky Mountain Steel (Evraz), a domestic producer of OCTG. In the submission, Evraz states that it supports the AD and CVD petitions on OCTG from India, the Philippines, Saudi Arabia, Korea, Taiwan, Thailand, Turkey, Ukraine, and Vietnam. In addition, Evraz provided its 2012 production of the domestic like product.[15]

We have relied upon data the petitioners and Evraz provided for

[8] *See* section 771(10) of the Act

[9] *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)).

[10] *See* Antidumping Duty Investigation Initiation Checklist: Oil Country Tubular Goods from India (India AD Initiation Checklist), at Attachment II; Antidumping Duty Investigation Initiation Checklist: Oil Country Tubular Goods from the Republic of Korea (Korea AD Initiation Checklist), at Attachment II; Antidumping Duty Investigation Initiation Checklist: Oil Country Tubular Goods from the Republic of the Philippines (the Philippines AD Initiation Checklist), at Attachment II; Antidumping Duty Investigation Initiation Checklist: Oil Country Tubular Goods from Saudi Arabia (Saudi Arabia AD Initiation Checklist), at Attachment II; Antidumping Duty Investigation Initiation Checklist: Oil Country Tubular Goods from Taiwan (Taiwan AD Initiation Checklist), at Attachment II; Antidumping Duty Investigation Initiation Checklist: Oil Country Tubular Goods from Thailand (Thailand AD Initiation Checklist), at Attachment II; Antidumping Duty Investigation Initiation Checklist: Oil Country Tubular Goods from the Republic of Turkey (Turkey AD Initiation Checklist), at Attachment II; Antidumping Duty Investigation Initiation Checklist: Oil Country Tubular Goods from Ukraine (Ukraine AD Initiation Checklist), at Attachment II; and Antidumping Duty Investigation Initiation Checklist: Oil Country Tubular Goods from the Socialist Republic of Vietnam (Vietnam AD 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.

[11] *See* Volume I of the petitions, at 3–4 and Exhibit I–3.

[12] *Id.*

[13] *Id.* at 1.

[14] *See* General Issues Supplement, at 7 and Exhibit Supp. I–65.

[15] *See* Letter from EVRAZ Rocky Mountain Steel, dated July 10, 2013, at 1–2.

purposes of measuring industry support.[16]

Based on information provided in the petitions, supplemental submissions, and other information readily available to the Department, we determine that the petitioners have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act for all of the petitions because the domestic producers (or workers) who support each of the petitions account for at least 25 percent of the total production of the domestic like product.[17] Based on information provided in the petitions and other submissions, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act for all of the petitions because the domestic producers (or workers) who support each of 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. 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.[18]

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 antidumping duty investigations that they are requesting the Department initiate.[19]

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.[20]

The petitioners contend that the industry's injured condition is illustrated by reduced market share; underselling and price depression or suppression; lost sales and revenues; stunted production, shipments, and capacity utilization; hindered growth in employment-related variables; and decline in financial performance.[21] 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.[22]

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 AD investigations of imports of OCTG from India, Korea, the Philippines, Saudi Arabia, Taiwan, Thailand, Turkey, Ukraine, and Vietnam. The sources of data for the deductions and adjustments relating to U.S. price and NV are discussed in greater detail in the country-specific initiation checklists.

Export Price

For India, the petitioners based U.S. price on price quotes and information provided by U.S. trading companies, customers, and foreign entities for subject merchandise sold by trading companies to the United States produced in India by three Indian producers of OCTG.[23]

For Korea, the Philippines, Taiwan, Turkey, and Vietnam, the petitioners based U.S. prices on price quotes from sales offers of U.S. distributors/trading companies for subject merchandise in the United States produced in and exported from the subject country by a producer of OCTG in that country.[24]

For Saudi Arabia, the petitioners based U.S. price on price information provided by U.S. sales representatives for subject merchandise sold to the United States produced in and exported from Saudi Arabia by a Saudi Arabian producer of OCTG.[25]

For Thailand and Ukraine, because they were unable to obtain price quotes for subject merchandise sold to the United States produced in and exported from these countries, the petitioners based U.S. price on average unit value data for products classified under the appropriate Harmonized Tariff Schedule of the United States (HTSUS) numbers for subject merchandise obtained from the U.S. Census Bureau for subject merchandise imported from these countries into the United States during the POI.[26]

For India, Korea, the Philippines, Saudi Arabia, Taiwan, Turkey, Ukraine, and Vietnam, the petitioners made deductions for movement and other expenses consistent with the sales and delivery terms.[27] For Korea, the petitioners additionally adjusted the quoted U.S. prices as necessary to account for further manufacturing of the OCTG in the United States.[28] The petitioners made no other adjustments to U.S. price.

Normal Value

For the Philippines and Taiwan, since home market prices were not reasonably available, the petitioners based NV on reasonably available third-country prices of the foreign like product produced and offered for sale in Canada by a producer of OCTG in the subject country.[29]

For India, the petitioners based NV on price information obtained through market research for the foreign like product produced and sold in India by three Indian producers of OCTG.[30]

For Saudi Arabia, the petitioners based NV on home market price quotes for the foreign like product produced and sold in Saudi Arabia by a Saudi Arabian producer of OCTG.[31]

For Thailand, since home market prices were not reasonably available, the petitioners based NV on export statistics from Thailand to Myanmar, the largest export market for foreign like product from Thailand after the United States, from the Global Trade Atlas. [32]

For Ukraine, the petitioners based NV on price information provided by

[16] *See* India AD Initiation Checklist, Korea AD Initiation Checklist, the Philippines AD Initiation Checklist, Saudi Arabia AD Initiation Checklist, Taiwan AD Initiation Checklist, Thailand AD Initiation Checklist, Turkey AD Initiation Checklist, Ukraine AD Initiation Checklist, and Vietnam AD Initiation Checklist, at Attachment II.

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *See* General Issues Supplement, at 7–8 and Exhibit Supp. I–66.

[21] *See* Volume I of the petitions, at 17–64 and Exhibits I–6 and I–8 through I–54; *see also* General Issues Supplement, at 8–9.

[22] *See* India AD Initiation Checklist, Korea AD Initiation Checklist, the Philippines AD Initiation Checklist, Saudi Arabia AD Initiation Checklist, Taiwan AD Initiation Checklist, Thailand AD Initiation Checklist, Turkey AD Initiation Checklist, Ukraine AD Initiation Checklist, and Vietnam AD Initiation Checklist, at Attachment III.

[23] *See* India AD Initiation Checklist.

[24] *See* Korea AD Initiation Checklist, the Philippines AD Initiation Checklist, Taiwan AD Initiation Checklist, Turkey AD Initiation Checklist, and Vietnam AD Initiation Checklist.

[25] *See* Saudi Arabia AD Initiation Checklist.

[26] *See* Thailand AD Initiation Checklist and Ukraine AD Initiation Checklist.

[27] *See* India AD Initiation Checklist, Korea AD Initiation Checklist, the Philippines AD Initiation Checklist, Saudi Arabia AD Initiation Checklist, Taiwan AD Initiation Checklist, Turkey AD Initiation Checklist, Ukraine AD Initiation Checklist, and Vietnam AD Initiation Checklist.

[28] *See* Korea AD Initiation Checklist.

[29] Because the petitioners alleged sales below cost (*see* ''Sales Below Cost Allegations'' section below), the petitioners calculated margins for these countries using constructed value (CV) (*see* ''Normal Value Based on Constructed Value'' section, below). *See also* the Philippines AD Initiation Checklist and Taiwan AD Initiation Checklist.

[30] *See* India AD Initiation Checklist.

[31] *See* Saudi Arabia AD Initiation Checklist.

[32] *See* Thailand AD Initiation Checklist.

market research for the foreign like product produced and sold in Ukraine by a Ukrainian producer of OCTG.[33]

For Korea and Turkey, the petitioners were unable to obtain home-market or third-country prices; accordingly, the petitioners based NV on CV.[34]

For India, the Philippines, and Taiwan, the petitioners made deductions for movement expenses consistent with the terms of delivery.[35] For India, the petitioners made a deduction for other expenses as well.[36] The petitioners made no adjustments to NV for Korea, Saudi Arabia, Thailand, Turkey, and Ukraine.

With respect to Vietnam, the petitioners state that the Department has long treated Vietnam as a non-market economy (NME) country.[37] 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 Vietnam 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 (FOPs) 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 Vietnam's NME status and the granting of separate rates to individual exporters.

The petitioners claim that India is an appropriate surrogate country because it is a market economy that is at a level of economic development comparable to that of Vietnam, it is a significant producer of the merchandise under consideration, and the data for valuing FOPs are both available and reliable.[38]

Based on the information provided by the petitioners, we believe it is appropriate to use India as a surrogate country for initiation purposes. Interested parties will have the opportunity to submit comments regarding surrogate country selection and will be provided an opportunity to submit publicly available information to value FOPs within 40 days before the scheduled date of the preliminary determination.[39]

Factors of Production

The petitioners based the FOPs usage for materials, labor and energy on the consumption rates of a U.S. producer of tubular products. The petitioners assert that the experience of the U.S. producer is appropriate for comparison to producers in Vietnam because it is a comparable producer of welded OCTG.[40]

Valuation of Raw Materials

The petitioners valued the FOPs for hot-rolled coil (*i.e.,* the primary raw material used to produce subject merchandise) using publicly available Indian domestic price data published by *Steelworld* in Indian rupees for the period from October 2012 through March 2013, the most recent six-month period for which data were available.[41]

The petitioners made a deduction for the value of scrap recovered during the production process based on the average import value of other ferrous waste and scrap using HTSUS subheadings 7204.41 and 7204.49 as published by Global Trade Atlas for the period from October 2012 through March 2013.[42] The petitioners excluded all import values from countries previously determined by the Department to maintain broadly available, non-industry-specific export subsidies and from countries previously determined by the Department to be NME countries. In addition, in accordance with the Department's practice, the average import value excludes imports that were labeled as originating from an unidentified country.

Valuation of Labor

The petitioners calculated labor using a 2005 industry-specific wage rate for India from the *Yearbook of Labor Statistics,* a labor database compiled by the International Labor Organization. The petitioners adjusted this wage rate for inflation using the Indian Consumer Price Index as published by the International Monetary Fund.[43]

Valuation of Energy

The petitioners valued electricity using the same rate used by the Department in *Circular Welded Pipe from Vietnam, i.e.,* a 2008 unit cost for electricity in India based on data from the Central Electricity Authority of India.[44] Similar to *Circular Welded Pipe from Vietnam,* the petitioners did not adjust these data for inflation as they became effective on a variety of different dates.[45]

Valuation of Factory Overhead, Selling, General and Administrative Expenses, and Profit

The petitioners calculated surrogate financial ratios (*i.e.,* manufacturing overhead, selling, general and administrative (SG&A) expenses, and profit) using the audited financial statements of Maharastra Seamless Limited and Ratnamani Metals & Tubes Ltd., two Indian producers of comparable merchandise (*i.e.,* welded OCTG and other tubular products), for the fiscal year ending March 31, 2012.[46]

Sales Below Cost Allegations

For India, the Philippines, and Taiwan, the petitioners provided information demonstrating reasonable grounds to believe or suspect that sales of OCTG in the Indian market and, for the Philippines and Taiwan, sales of OCTG in the Canadian market, were made at prices below the fully-absorbed cost of production (COP), within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation. The Statement of Administrative Action (SAA), submitted to the Congress in connection with the interpretation and application of the Uruguay Round Agreements Act, states that an allegation of sales below COP need not be specific to individual exporters or producers.[47] The SAA states that ''Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation.''[48]

Further, the SAA provides that section 773(b)(2)(A) of the Act retains the requirement that the Department have ''reasonable grounds to believe or suspect'' that below-cost sales have occurred before initiating such an investigation. Reasonable grounds exist when an interested party provides specific factual information on costs and

[33] *See* Ukraine AD Initiation Checklist.

[34] *See* Korea AD Initiation Checklist and Turkey AD Initiation Checklist.

[35] *See* India AD Initiation Checklist, the Philippines AD Initiation Checklist, and Taiwan AD Initiation Checklist.

[36] *See* India AD Initiation Checklist.

[37] *See* Volume VIII of the petition, at 2.

[38] *Id.* at 3–5.

[39] *See* 19 CFR 351.301(c)(3)(i). Note that this is the revised regulation published on April 1, 2013. *See http://www.gpo.gov/fdsys/pkg/CFR–2013-title19-vol3/html/CFR–2013-title19-vol3.htm.*

[40] *See* Volume VIII of the petition at exhibit VIII–14, at 1.

[41] *Id.* at 4.

[42] *Id.* at exhibit VIII–14, at 5.

[43] *Id.* at exhibit VIII–14, at 6.

[44] *Id.* at exhibit VIII–14, at 7, and *Circular Welded Carbon-Quality Steel Pipe from Vietnam,* 77 FR 64483 (October 22, 2012).

[45] *Id.*

[46] *Id.* at exhibit VIII–14, at 8

[47] *See* SAA, H.R. Doc. No. 103–316 at 833 (1994).

[48] *Id.*

prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices.[49]

Cost of Production

Pursuant to section 773(b)(3) of the Act, COP consists of the cost of manufacturing (COM); SG&A expenses; financial expenses; and packing expenses. The petitioners calculated COM based on the petitioners' experience adjusted for known differences between the U.S. and the industries of the respective country (*i.e.,* India, the Philippines, and Taiwan), during the proposed POI.[50] Using publicly-available data to account for price differences, the petitioners multiplied the surrogate usage quantities by the surrogate value of the inputs used to manufacture OCTG.

To determine factory overhead, SG&A, and financial expense rates, the petitioners relied on financial statements of producers of comparable merchandise operating in the respective foreign country.[51]

Based upon a comparison of the prices of the foreign like product in the home market or third-country to the calculated COP of the most comparable product, we find reasonable grounds to believe or suspect that sales of the foreign like products were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating country-wide cost investigations on sales of OCTG from India in India and on sales of OCTG from the Philippines and Taiwan to Canada.

Normal Value Based on Constructed Value

For India, the Philippines and Taiwan, because they alleged sales below cost, pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners calculated NV based on CV. The petitioners calculated CV using the same average COM, SG&A, financial expense, and packing figures used to compute the COPs. The petitioners relied on the same financial statements used as the basis for the factory overhead, SG&A, and financial expense rates to calculate the profit rates.[52]

Korea

The petitioners based NV on CV, as neither a home market nor a third country price was reasonably available. Pursuant to section 773(e) of the Act, CV consists of the COM; SG&A expenses; financial expenses; packing expenses; and profit. The petitioners calculated COM (except depreciation) based on the petitioners' experience adjusted for known differences between the U.S. and Korean industries, during the proposed POI, multiplied by the value of the inputs used to manufacture OCTG in Korea using publicly-available data. [53]

To determine depreciation, SG&A, and financial expense rates, the petitioners relied on the financial statements of a Korean producer of comparable merchandise. The petitioners relied on the same financial statements used as the basis for the factory overhead, SG&A, and financial expense rates to calculate the profit rate.[54]

Turkey

The petitioners based NV on CV, as neither a home market nor a third country price was reasonably available. Pursuant to section 773(e) of the Act, CV consists of the COM; SG&A expenses; financial expenses; packing expenses; and profit. The petitioners calculated COM (except factory overhead) and packing expenses based on the petitioners' experience adjusted for known differences between the U.S. and Turkish industries, during the proposed POI, multiplied by the value of the inputs used to manufacture OCTG in Turkey using publicly-available data. [55]

To determine factory overhead, SG&A, and financial expense rates, the petitioners relied on the fiscal year ending 2012 financial statements of a Turkish producer of comparable merchandise. The petitioners relied on the same fiscal year ending 2012 financial statements used as the basis for the factory overhead, SG&A, and financial expense rates to calculate the profit rate.[56]

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of OCTG from India, Korea, the Philippines, Saudi Arabia, Taiwan, Thailand, Turkey, Ukraine, and Vietnam are being, or are likely to be, sold in the United States at less than fair value. Based on comparisons of export price (EP) to NV in accordance with section 773(a)(1) of the Act, the estimated dumping margins for OCTG from: (1) India range from 12.67 percent to 239.64 percent;[57] (2) Korea range from 66.19 percent to 158.53 percent;[58] (3) the Philippines range from 46.04 percent to 56.38 percent;[59] (4) Saudi Arabia is 53.34 percent;[60] (5) Taiwan range from 68.44 percent to 70.98 percent;[61] (6) Thailand is 118.32 percent;[62] (7) Turkey range from 44.52 percent to 47.20 percent;[63] and (8) Ukraine range from 25.75 percent to 30.76 percent.[64] Based on comparisons of EP to NV in accordance with section 773(c) of the Act, the estimated dumping margins for OCTG from Vietnam range from 103.43 percent to 111.47 percent.[65]

Initiation of Antidumping Duty Investigations

Based upon the examination of the AD petitions on OCTG from India, Korea, the Philippines, Saudi Arabia, Taiwan, Thailand, Turkey, Ukraine, and Vietnam, 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 OCTG from India, Korea, the Philippines, Saudi Arabia, Taiwan, Thailand, Turkey, Ukraine, and Vietnam 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

The petitioners name 48 companies as producers/exporters of OCTG from India, ten companies as producers/exporters of OCTG from Korea, one company as a producer/exporter of OCTG from the Philippines, 13 companies as producers/exporters of OCTG from Saudi Arabia, five companies as producers/exporters of OCTG from Taiwan, three companies as producers/exporters of OCTG from Thailand, five companies as producers/exporters of OCTG from Turkey, three companies as producers/exporters of OCTG from Ukraine, and eight companies as producers/exporters of OCTG from Vietnam.[66]

[49] *Id.*

[50] *See* India AD Initiation Checklist, the Philippines AD Initiation Checklist, and Taiwan AD Initiation Checklist.

[51] *Id.*

[52] *See* India AD Initiation Checklist, the Philippines AD Initiation Checklist, and Taiwan AD Initiation Checklist.

[53] *See* Korea AD Initiation Checklist.

[54] *Id.*

[55] *See* Turkey AD Initiation Checklist.

[56] *Id.*

[57] *See* India AD Initiation Checklist.

[58] *See* Korea AD Initiation Checklist.

[59] *See* the Philippines AD Initiation Checklist.

[60] *See* Saudi Arabia AD Initiation Checklist.

[61] *See* Taiwan AD Initiation Checklist.

[62] *See* Thailand AD Initiation Checklist.

[63] *See* Turkey AD Initiation Checklist.

[64] *See* Ukraine AD Initiation Checklist.

[65] *See* Vietnam AD Initiation Checklist.

[66] *See* the petitions at Volume I, Exhibit I–5.

Following standard practice in AD investigations involving market economy countries, in the event the Department determines that the number of known exporters or producers for any of these investigations is large, the Department may select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of OCTG from the relevant countries. We intend to release the CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO within five days of publication of this **Federal Register** notice.

We intend to make our decision regarding respondent selection within 20 days of publication of this notice. The Department invites comments regarding the CBP data and respondent selection within seven days of publication of this **Federal Register** notice for India, Korea, the Philippines, Saudi Arabia, Taiwan, Thailand, Turkey, and Ukraine.[67]

With respect to Vietnam, the petitioners have identified eight potential respondents. In accordance with our standard practice for respondent selection for NME countries, we intend to issue quantity and value questionnaires to each potential respondent and base respondent selection on the responses received. In addition, the Department will post the quantity and value questionnaire along with the filing instructions on the Import Administration Web site (*http://ia.ita.doc.gov/ia-highlights-and-news.html*). Exporters and producers of OCTG from Vietnam that do not receive quantity and value questionnaires via mail may still submit a quantity and value response and can obtain a copy from the Import Administration Web site. The quantity and value questionnaire must be submitted by all Vietnamese exporters/producers no later than August 12, 2013.[68] All quantity and value questionnaires must be filed electronically using IA ACCESS.

Separate Rates

In order to obtain separate rate status in an NME investigation, exporters and producers must submit a separate rate status application.[69] The specific requirements for submitting the separate rate application in the Vietnam 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 Vietnam respondents submit a response to both the quantity and value questionnaire and the separate rate application by their respective deadlines 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.[70]

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 India, Korea, the Philippines, Saudi Arabia, Taiwan, Thailand, Turkey, Ukraine, and Vietnam 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).

Meeting With the Government of Korea

Pursuant to a request by the Government of Korea, on July 17, 2013, Department officials met with Korean Government officials to discuss that government's inquiry regarding the status of the Department's consideration of the petition and industry support, as provided under section 732(b)(3)(B) of the Act.

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 August 16, 2013, whether there is a reasonable indication that imports of OCTG from India, Korea, the Philippines, Saudi Arabia, Taiwan, Thailand, Turkey, Ukraine, and Vietnam 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 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

[67] *See Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea and Mexico: Initiation of Antidumping Duty Investigations,* 76 FR 23281, 23285 (April 26, 2011).

[68] As noted above, twenty calendar days from the signature date of this notice is August 11, 2013, which is a Sunday. Accordingly, we are setting the deadline on the next business day.

[69] *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.*

[70] *See* Separate Rates and Combination Rates Bulletin at 6 (emphasis added).

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.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[71] Parties are hereby reminded that revised certification requirements are in effect for company/government officials, as well as their representatives, in all segments of any AD or CVD proceedings initiated on or after March 14, 2011.[72] The formats for the revised certifications are provided at the end of the *Interim Final Rule.* Foreign governments and their officials may continue to submit certifications in either the format that was in use prior to the effective date of the *Interim Final Rule,* or in the format provided in the *Interim Final Rule.*[73] The Department intends to reject factual information submissions if the submitting party does not comply with the revised certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO 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 (January 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)).

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: July 22, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix I

Scope of the Investigations

The merchandise covered by the investigations is certain oil country tubular goods (''OCTG''), which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.,* whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (''API'') or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of the investigations also covers OCTG coupling stock.

Excluded from the scope of the investigations are: casing or tubing containing 10.5 percent or more by weight of chromium; drill pipe; unattached couplings; and unattached thread protectors.

The merchandise subject to the investigations is currently classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.31.10, 7304.29.31.20, 7304.29.31.30, 7304.29.31.40, 7304.29.31.50, 7304.29.31.60, 7304.29.31.80, 7304.29.41.10, 7304.29.41.20, 7304.29.41.30, 7304.29.41.40, 7304.29.41.50, 7304.29.41.60, 7304.29.41.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.61.15, 7304.29.61.30, 7304.29.61.45, 7304.29.61.60, 7304.29.61.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.29.10.30, 7306.29.10.90, 7306.29.20.00, 7306.29.31.00, 7306.29.41.00, 7306.29.60.10, 7306.29.60.50, 7306.29.81.10, and 7306.29.81.50.

The merchandise subject to the investigations may also enter under the following HTSUS item numbers: 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.39.00.76, 7304.39.00.80, 7304.59.60.00, 7304.59.80.15, 7304.59.80.20, 7304.59.80.25, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, 7304.59.80.70, 7304.59.80.80, 7305.31.40.00, 7305.31.60.90, 7306.30.50.55, 7306.30.50.90, 7306.50.50.50, and 7306.50.50.70.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigations is dispositive.

[FR Doc. 2013–18164 Filed 7–26–13; 8:45 am]

BILLING CODE 3510–DS–P

[71] *See* section 782(b) of the Act.

[72] *See Certification of Factual Information for Import Administration during Antidumping and Countervailing Duty Proceedings: Interim Final Rule,* 76 FR 7491 (February 10, 2011) (*Interim Final Rule*), amending 19 CFR 351.303(g)(1) and (2).

[73] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Supplemental Interim Final Rule,* 76 FR 54697 (September 2, 2011).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–824, A–583–837]

Polyethylene Terephthalate Film from India and Taiwan: Extension of Time Limits for Preliminary and Final Results of the Second Antidumping Duty Sunset Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* July 29, 2013.

FOR FURTHER INFORMATION CONTACT: Jun Jack Zhao or Jacky Arrowsmith at 202–482–1396 or 202–482–5255, respectively, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Background

On April 2, 2013, the Department of Commerce (the Department) initiated the second sunset reviews of the antidumping duty (AD) orders on polyethylene terephthalate film (PET Film) from India and Taiwan, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). *See Initiation of Five-Year (''Sunset'') Review*, 78 FR 19647 (April 2, 2013). Within the deadline specified in 19 CFR 351.218(d)(1)(i), the Department received notices of intent to participate, in both sunset reviews, on behalf of DuPont Teijin Films, Mitsubishi Polyester Film, Inc., and SKC, Inc. (collectively, domestic interested parties). Each claimed interested party status under section 771(9)(C) of the Act, as a producer of domestic like product. The Department received timely substantive responses from these domestic interested parties. On April 22, 2013, after analyzing the substantive responses of interested parties, consistent with 19 CFR 351.218(e)(1)(ii)(A), the Department determined to conduct expedited sunset reviews of these AD orders on the basis that no respondent interested party submitted a substantive response in either review. *See* Letter to Catherine DeFilippo, Director, Office of Investigations, International Trade Commission, regarding ''Sunset Reviews Initiated on April 2, 2013,'' (April 22, 2013).

On February 14, 2012, the Department published in the **Federal Register** a notice entitled *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews*). In that notice, the Department announced the modification of its methodology regarding the calculation of the weighted-average dumping margins in certain segments of antidumping duty proceedings and stated that it would apply to all sunset reviews for which preliminary or final results were due more than 60 days after publication (*i.e.,* April 16, 2012). On July 22, 2013, the Department reconsidered its determination to conduct expedited sunset reviews of these orders and determined to conduct full sunset reviews of the AD orders on PET Film from India and Taiwan.[1] The preliminary results of these full sunset reviews are currently due July 22, 2013 [2] and the final results are due November 27, 2013.

Extension Of Time Limits

In accordance with section 751(c)(5)(B) of the Act, the Department may extend the period of time for making its determination by not more than 90 days, if it determines that the sunset review is extraordinarily complicated. We determine that these AD sunset reviews are extraordinarily complicated, pursuant to section 751(c)(5)(C)(i) and (ii) of the Act, because of the need to consider the effect of the *Final Modification for Reviews* on the determinations the Department must make with regard to both the likelihood of dumping to continue or recur and the magnitude of the margin of dumping to prevail if the orders were revoked. *See* Adequacy Redetermination Memorandum.

Accordingly, the Department is extending the deadlines for both the preliminary and final results of these full sunset reviews by 90 days. As a result, the Department intends to issue the preliminary results of these full sunset reviews of the AD orders on PET Film from India and Taiwan no later than October 18, 2013, and the final results of the reviews no later than February 25, 2014.

This notice is issued in accordance with sections 751(c)(5)(B) and (C) of the Act.

Dated: July 22, 2013.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2013–18161 Filed 7–26–13; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Mark Hoadley, Acting Director, Antidumping and Countervailing Duty Operations, Office 6, regarding ''Sunset Reviews of the Antidumping Duty Orders on Polyethylene Terephthalate Film from India and Taiwan: Adequacy Redetermination Memorandum,'' (July 22, 2013).

[2] As the actual due date of July 20, 2013 falls on a Saturday, the preliminary results are due the next business day, *i.e.,* July 22, 2013. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0168]

Privacy Act of 1974; Computer Matching Program

AGENCY: Defense Manpower Data Center (DMDC), DoD.

ACTION: Notice of a Computer Matching Program.

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended (5 U.S.C. 552a), requires agencies to publish advanced notices of any proposed or revised computer matching program by the matching agency for public comment. The Department of Defense (DoD), as the matching agency under the Privacy Act of 1974, as amended, is hereby giving notice to the record subjects of a computer matching program between the DoD and the Department of Health and Human Services (HHS) acting on behalf of the State Public Assistance Agencies (SPAA). The purpose of the computer matching program is to exchange personal data for purposes of identifying individuals who are receiving Federal compensation or pension payments and also are receiving payments pursuant to Federal benefit programs being administered by the States.

DATES: This proposed action will become effective August 28, 2013 and matching may commence unless changes to the matching program are required due to public comments or by Congressional or by Office of Management and Budget objections. Any public comment must be received before the effective date.

Comments must be received before August 28, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Samuel P. Jenkins at (703) 571–0070.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended (5 U.S.C. 552a), the HHS and DMDC have concluded an agreement to conduct a computer matching program between agencies. The purpose of the computer matching program is to exchange personal data for purposes of identifying individuals who are receiving Federal compensation or pension payments and also are receiving payments pursuant to Federal benefit programs being administered by the States.

The parties to this agreement have determined that a computer matching program is the most efficient, expeditious, and effective means of obtaining and processing the information needed by the SPAAs to identify individuals who may be ineligible for public assistance benefits. The principal alternative to using a computer matching program for identifying such individuals would be to conduct a manual comparison of all Federal personnel records with SPAA records of those individuals currently receiving public assistance under a Federal benefit program being administered by the State. Conducting a manual match, however, would clearly impose a considerable administrative burden, constitute a greater intrusion of the individual's privacy, and would result in additional delay in determining eligibility and, if applicable, the eventual recovery of any outstanding debts.

A copy of the computer matching agreement between HHS and DoD is available upon request. Requests should be submitted to the address captioned above or to the Director, Office of Financial Services Office of Administration, 370 L'Enfant Prmenade

SW., Washington, DC 20447; Telephone: (202) 401–7237.

Set forth is the notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published on June 19, 1989, at 54 FR 25818.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, and an advance copy of this notice was submitted on July 16, 2013, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records about Individuals'', dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: July 24, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

NOTICE OF A COMPUTER MATCHING PROGRAM AMONG THE DEFENSE MANPOWER DATA CENTER, THE DEPARTMENT OF DEFENSE; THE ADMINISTRATION FOR CHILDREN AND FAMILIES, DEPARTMENT OF HEALTH AND HUMAN SERVICES; AND STATE PUBLIC ASSISTANCE AGENCIES FOR VERIFICATION OF CONTINUED ELIGIBILITY FOR PUBLIC ASSISTANCE

A. PARTICIPATING AGENCIES:

Participants in this computer matching program are State Public Assistance Agencies (SPAA), the Department of Health and Human Services (HHS), and the Department of Defense (DoD). The SPAA is the source agency, the agency disclosing the records for purpose of the match; HHS is the facilitating agency, the agency acting on behalf of the SPAAs, and DoD is the matching agency, the agency that actually performs the match.

B. PURPOSE OF THE MATCH:

This agreement establishes an arrangement for a periodic computer matching program between DoD as the matching agency, ACF as the facilitating agency, and the SPAAs as the source agencies who will use the data in their public assistance programs. The purpose of this matching program is to provide the SPAAs with data from DoD military and civilian pay files, the military retired pay files, survivor pay files and the OPM civilian retired and survivor pay files to determine eligibility and to ensure fair and equitable treatment in the delivery of benefits attributable to funds provided by the Federal Government. The SPAAs will use the matched data to verify the continued eligibility of individuals to receive public assistance benefits and, if ineligible, to take such action as may be authorized by law and regulation.

ACF, in its role as match facilitator, will support each SPAA's efforts to ensure appropriate delivery of benefits by assisting with drafting the necessary agreements, helping arrange signatures to the agreements and acting as a central shipping point as necessary.

This agreement sets forth the responsibility of the SPAAs with respect to information obtained pursuant to this agreement. Each SPAA match is expected to comply with pertinent requirements of the Privacy Act, including its implementing regulations and guidance.

C. AUTHORITY FOR CONDUCTING THE MATCH:

The legal authority for conducting the matching program is contained in sections 402 and 1137 of the Social Security Act (42 U.S.C. 602 and 1320b-7).

D. RECORDS TO BE MATCHED:

The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

1. Federal, but not State, agencies must publish system notices for ''systems of records'' pursuant to subsection (e)(4) of the Privacy Act and must identify ''routine uses'' pursuant to subsection (b)(3) of the Privacy Act for those systems of records from which they intend to disclose this information. The DoD system of records described in this notice contains an appropriate routine use proviso, which permits disclosure of information by DMDC to ACF and the SPAAs.

2. DoD will use personal data from the record system identified as DMDC 01, entitled ''Defense Manpower Data Center Data Base'', November 23, 2011, 76 FR 72391.

3. HHS will be disclosing, as applicable, to DMDC personal data it has collected from the SPAAs. No information will be disclosed from systems of records that ACF operates and maintains. HHS will be disclosing, as applicable, to the SPAAs personal data it has received from DMDC. The DMDC supplied matched data will be disclosed by ACF pursuant to the DoD routine use.

E. DESCRIPTION OF COMPUTER MATCHING PROGRAM:

Each participating SPAA will send ACF an electronic file of eligible public assistance client information. These files are non-Federal computer records maintained by the States. ACF will then send this information on to DMDC. In the alternative, participating SPAAs can submit files to DMDC via the Social Security Administration's (SSA) ''Connect Direct'' portal. After DMDC receives the SPAA files, it will match the SPAA files against the DMDC database. The DMDC database consists of pay of DoD personnel and retirement records of non-postal Federal civilian employees and military members, both active and retired and survivor annuitants. The matching activity will take place at DMDC and will use all nine digits of the SSN. Resulting ''hits'' or matches will be disclosed to the relevant SPAAs.

1. The electronic files provided by each participating SPAA will contain data elements of the client's name, SSN, date of birth, address, sex, marital status, number of dependents, information regarding the specific public assistance benefit being received, and such other data as considered necessary on no more than 10,000,000 public assistance beneficiaries.

2. The DMDC computer database file contains approximately 4.85 million records of active duty and retired military members, including the Reserve and Guard, and approximately 3.68 million records of active and retired non-postal Federal civilian employees. Employee or retiree records may include information on benefits payable to employee or retiree dependents and/or survivors.

3. DMDC will match the SSN on the SPAA file by computer against the DMDC database. Matching records, ''hits'' based on SSNs, will produce data elements of the individual's name; SSN; active or retired; if active, military service or employing agency, and current work or home address, and such other data as considered necessary.

F. INCLUSIVE DATES OF THE MATCHING PROGRAM:

The effective date of the matching agreement and date when matching may actually begin shall be at the expiration of the 40-day review period for OMB and Congress, or 30 days after publication of the matching notice in the **Federal Register**, whichever date is later. The parties to this agreement may assume OMB and Congressional concurrence if no comments are received within 40 days of the date of the transmittal letter. The 40-day OMB and Congressional review period and

the mandatory 30-day public comment period for the **Federal Register** publication of the notice will run concurrently. By agreement between HHS and DoD, the matching program will be in effect for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. ADDRESS FOR RECEIPT OF PUBLIC COMMENTS OR INQUIRIES:

Defense Privacy and Civil Liberties Office, Director for Privacy, 241 18th Street South, Suite 101, Arlington, VA 22202. Telephone (703) 571–0070.

[FR Doc. 2013–18091 Filed 7–26–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Availability of the Fiscal Year 2012 Inventory of Contracts for Services

AGENCY: Department of Defense (DoD).

ACTION: Notice of availability.

SUMMARY: DoD announces the availability of the Inventory of Contracts for Services for Fiscal Year 2012 pursuant to section 2330a of title 10, United States Code. Inventory is available to the public.

DATES: Comments should be submitted by August 16, 2013.

ADDRESSES: Submit comments to: Office of the Director, Defense Procurement and Acquisition Policy, ATTN: OUSD(AT&L)DPAP/CPIC, 3060 Defense Pentagon, Washington, DC 20301–3060. Comments also may be submitted by email to *Jeffrey.Grover@osd.mil*

FOR FURTHER INFORMATION CONTACT: Jeff Grover, telephone 703–697–9352.

SUPPLEMENTARY INFORMATION: In accordance with section 2330a of title 10 United States Code, the Office of the Deputy Director, Defense Procurement and Acquisition Policy, Contract Policy and International Contracting (DPAP/CPIC) will make available to the public the annual inventory of contracts for services. The inventory is posted to the Defense Procurement and Acquisition Policy Web site at: *http://www.acq.osd.mil/dpap/cpic/cp/acquisition_of_services_policy.html*

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2013–18152 Filed 7–26–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2013–0013]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Defense Acquisition Regulations System has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Consideration will be given to all comments received by August 28, 2013.

Title, Associated Forms and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 227.71, Rights in Technical Data, and Subpart 227.72, Rights in Computer Software and Computer Software Documentation, and related provisions and clauses of the Defense Federal Acquisition Regulation Supplement (DFARS); OMB Control Number 0704–0369.

Number of Respondents: 50,250.

Responses per Respondent: about 16.8.

Annual Responses: 846,135.

Average Burden per Response: about 1.16 hours.

Annual Response Burden Hours: 978,801 hours.

Annual Recordkeeping Burden Hours: 75,000 hours.

Total Annual Burden Hours: 1,053,801 hours.

Needs and Uses: DFARS Subparts 227.71 and 227.72 prescribe the use of solicitation provisions and contract clauses containing information collection requirements that are associated with rights in technical data and computer software. DoD needs this information to implement 10 U.S.C. 2320, Rights in technical data, and 10 U.S.C. 2321, Validation of proprietary data restrictions. DoD uses the information to recognize and protect contractor rights in technical data and computer software that are associated with privately funded developments; and to ensure that technical data delivered under a contract are complete and accurate and satisfy contract requirements.

Affected Public: Businesses or other for-profit and not-for- profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or maintain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method: *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number, and title for the **Federal Register** document. The general policy for comments and other public 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 provided. To confirm receipt of your comment(s), please check *http://www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Kortnee Stewart,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2013–18146 Filed 7–26–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2013–ICCD–0099]

Agency Information Collection Activities; Comment Request; William D. Ford Federal Direct Loan Program Repayment Plan Selection Form

AGENCY: Department of Education (ED), Federal Student Aid (FSA).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before September 27, 2013.

ADDRESSES: Comments submitted in response to this notice should be

submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0099 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 2E105, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov*. Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), 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 Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department 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.

Title of Collection: William D. Ford Federal Direct Loan Program Repayment Plan Selection Form

OMB Control Number: 1845–0014

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Individuals or households

Total Estimated Number of Annual Responses: 660,000

Total Estimated Number of Annual Burden Hours: 110,220

Abstract: The Repayment Plan Selection form serves as the means by which Direct Loan borrowers notify us of their choice of an initial repayment plan before their loans enter repayment. The form may also be used by borrowers to request a change in repayment plans after their loans have entered repayment. If a borrower does not select an initial repayment plan, the borrower is placed on the Standard Repayment Plan in accordance with 34 CFR 685.210(a)(2).

Dated: July 23, 2013.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–18036 Filed 7–26–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2013–ICCD–0098]

Agency Information Collection Activities; Comment Request; Foreign Schools Eligibility Criteria Apply To Participate in Title IV HEA Programs

AGENCY: Department of Education (ED), Federal Student Aid (FSA).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before September 27, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0098 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 2E105, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov.* Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), 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 Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department 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.

Title of Collection: Foreign Schools Eligibility Criteria Apply to Participate in Title IV HEA Programs

OMB Control Number: 1845–0105

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Private sector, individuals or households, State, Local, or Tribal Governments

Total Estimated Number of Annual Responses: 2,718

Total Estimated Number of Annual Burden Hours: 285

Abstract: These regulations (34 CFR 600.54, 600.55, 600.57) contain some of the criteria foreign schools must meet for determinations of eligibility for participation in Title IV programs under the Higher Education Act of 1965, as amended. There has been no change to the language of the regulations. This is a request to extend the collection of information to ensure the eligibility of foreign graduate medical schools and foreign nursing schools meet the requirements to participate in the Direct Loan program.

Dated: July 23, 2013.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–18035 Filed 7–26–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Collection Requests; Comment Request

AGENCY: Department of Education.

ACTION: Correction Notice.

SUMMARY: On July 24, 2013, the U.S. Department of Education published a 60-day comment period notice in the **Federal Register** (Page 44553, Column 3) seeking public comment for an information collection entitled, ''Early Childhood Longitudinal Study Kindergarten Class of 2010–11 (ECLS–K: 2011) Spring Third-Grade National Collection, Fourth-Grade Recruitment, and Fifth-Grade Tracking''. The OMB number identified in the notice was incorrect. The correct OMB number is 1850–0750.

The Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

Dated: July 24, 2013.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–18097 Filed 7–26–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2013–ICCD–0097]

Agency Information Collection Activities; Comment Request; Student Assistance General Provisions—Subpart K—Cash Management

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before September 27, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0097 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 2E105, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov*. Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), 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 Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department 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.

Title of Collection: Student Assistance General Provisions—Subpart K—Cash Management.

OMB Control Number: 1845–0106.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Private Sector, State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 682,848.

Total Estimated Number of Annual Burden Hours: 59,999.

Abstract: These regulations require institutions to provide a method for a Federal Pell Grant eligible student to obtain or purchase, by the seventh day of a payment period, the books and supplies required for the payment period when certain conditions are met. If, 10 days before the beginning of the payment period the institution could disburse Title IV, Higher Education Act of 1965, as amended (HEA) program funds for which the student was eligible, and if disbursed a credit balance would result, the institution is required to provide to the student the lesser of the presumed credit balance or the amount needed by the student for books and supplies, as determined by the institution.

Dated: July 23, 2013.

Stephanie Valentine,

Acting Director,

Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–18034 Filed 7–26–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Revision of a Currently Approved Information Collection for the State Energy Program

AGENCY: U.S. Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE) invites public comment on a revision of a currently approved collection of information that DOE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995. The information collection requests a revision and three-year extension of its State Energy Program, OMB Control Number 1910–5126.

The proposed collection will collect information on the status of grantee activities, expenditures, and results, to ensure that program funds are being used appropriately, effectively and expeditiously (especially important for Recovery Act programs closing out during this information collection period).

Comments are invited on: (a) Whether the revision of the currently approved 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 pertaining to the approved collection of information, including the validity of the methodology and assumptions used; (c) ways to further enhance the quality, utility, and clarity of the information being collected; and (d) ways to further minimize the burden regarding the collection of information on respondents, including through the use

of automated collection techniques or other forms of information technology.

DATES: Comments regarding this revision to an approved information collection must be received on or before September 27, 2013. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: Written comments may be sent to Christine Platt Patrick, EE–2K, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, Email: *Christine.Platt@ee.doe.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to: Pete Davis, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–1290, Phone: (720) 356–1606, Fax: (202) 287–1745, Email: *Pete.Davis@go.doe.gov*.

Additional information and reporting guidance concerning the State Energy Program (SEP) is available for review at the following Web site: *http://www1.eere.energy.gov/wip/sep.html*.

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) *OMB No.:* 1910–5126; (2) *Information Collection Request Title:* State Energy Program; (3) *Type of Review:* Revision of a Currently Approved Information Collection; (4) *Purpose:* To collect information on the status of grantee activities, expenditures, and results, to ensure that program funds are being used appropriately, effectively and expeditiously; (5) *Annual Estimated Number of Respondents:* 56; (6) *Annual Estimated Number of Total Responses:* 224; (7) *Annual Estimated Number of Burden Hours:* 7,600; (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:*$ 304,000.

Statutory Authority: Title V, Subtitle E of the Energy Independence and Security Act (EISA), Pub. L. 110–140 as amended (42 U.S.C. 17151 et seq.).

Issued in Washington, DC: July 23, 2013.

AnnaMaria Garcia,

Program Manager, Office of Weatherization and Intergovernmental Programs Office of Energy Efficiency and Renewable Energy.

[FR Doc. 2013–18119 Filed 7–26–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Extension of a Currently Approved Information Collection for the Weatherization Assistance Program

AGENCY: U.S. Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE) invites public comment on an extension of a currently approved collection of information that DOE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995. The Department of Energy (DOE) has submitted an information collection request to the OMB for extension under the provisions of the Paperwork Reduction Act of 1995. The information collection requests a three-year extension of its Weatherization Assistance Program, OMB Control Number 1910–5127. The proposed collection will collect information on the status of grantee activities, expenditures, and results, to ensure that program funds are being used appropriately, effectively and expeditiously.

Comments are invited on: (a) Whether the currently approved 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 pertaining to the approved collection of information, including the validity of the methodology and assumptions used; (c) ways to further enhance the quality, utility, and clarity of the information being collected; and (d) ways to further minimize the burden regarding the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this revision to an approved information collection must be received on or before September 27, 2013. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: Written comments may be sent to Christine Platt Patrick, EE–2K, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, Email: *Christine.Platt@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to: Lauren Hall, EE–2K, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–1290, Phone: (202)287–1870, Fax: (202) 287–1745, Email: *Lauren.Hall@ee.doe.gov.*

Additional information and reporting guidance concerning the Weatherization Assistance Program (WAP) is available for review at the following Web site: *http://www1.eere.energy.gov/wip/wap.html.*

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) *OMB No.:*1910–5127; (2) *Information Collection Request Title:* ''Weatherization Assistance Program (WAP)''; (3) *Type of Review:* Extension of a Currently Approved Information Collection; (4) *Purpose:* To collect information on the status of grantee activities, expenditures, and results, to ensure that program funds are being used appropriately, effectively and expeditiously (5) *Annual Estimated Number of Respondents:* 58; (6) *Annual Estimated Number of Total Responses:* 696; (7) *Annual Estimated Number of Burden Hours:* 2,088; (8) Annual Estimated Reporting and Recordkeeping Cost Burden: $0

Statutory Authority: Title V, Subtitle E of the Energy Independence and Security Act (EISA), Public Law 110–140 as amended (42 U.S.C. 17151 et seq.).

Issued in Washington, DC July 23, 2013.

AnnaMaria Garcia,

Program Manager, Office of Weatherization and Intergovernmental, Programs Office of Energy Efficiency and Renewable Energy.

[FR Doc. 2013–18120 Filed 7–26–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, August 15, 2013, 6:00 p.m.

ADDRESSES: Barkley Centre, 111 Memorial Drive, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: Rachel Blumenfeld, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6806.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations

to DOE–EM and site management in the areas of environmental restoration, waste management and related activities.

Tentative Agenda:

- Call to Order, Introductions, Review of Agenda
- Administrative Issues
- Public Comments (15 minutes)
- Adjourn.

Breaks Taken As Appropriate.

Public Participation: The EM SSAB, Paducah, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Rachel Blumenfeld as soon as possible in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Rachel Blumenfeld at the telephone number listed above. Requests must be received as soon as possible prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments. The EM SSAB, Paducah, will hear public comments pertaining to its scope (clean-up standards and environmental restoration; waste management and disposition; stabilization and disposition of non-stockpile nuclear materials; excess facilities; future land use and long-term stewardship; risk assessment and management; and clean-up science and technology activities). Comments outside of the scope may be submitted via written statement as directed above.

Minutes: Minutes will be available by writing or calling Rachel Blumenfeld at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.pgdpcab.energy.gov/2013Meetings.html*.

Issued at Washington, DC on July 24, 2013.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2013–18121 Filed 7–26–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

July 22, 2013.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC13–131–000.
Applicants: Carthage Energy, LLC, Allegany Generating Station LLC.
Description: Application for Authorization for Disposition of Jurisdictional Facilities and Request for Expedited Action of Carthage Energy, LLC, et al.
Filed Date: 7/22/13.
Accession Number: 20130722–5091.
Comments Due: 5 p.m. ET 8/12/13.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG13–47–000.
Applicants: Desert Sunlight 250, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generators Status of Desert Sunlight 250, LLC.
Filed Date: 7/19/13.
Accession Number: 20130719–5162.
Comments Due: 5 p.m. ET 8/9/13.

Docket Numbers: EG13–48–000.
Applicants: Desert Sunlight 300, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Desert Sunlight 300, LLC.
Filed Date: 7/19/13.
Accession Number: 20130719–5167.
Comments Due: 5 p.m. ET 8/9/13.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–2682–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance Filing of Pro Forma Tariff Sheets of Midcontinent Independent System Operator, Inc. regarding Module B–1 of MISO's Tariff.
Filed Date: 7/22/13.
Accession Number: 20130722–5108.
Comments Due: 5 p.m. ET 8/12/13.

Docket Numbers: ER13–89–002.
Applicants: Midcontinent Independent System Operator, Inc., MidAmerican Energy Company.
Description: 07–22–2013 MidAm Order 1000 Compliance to be effective 10/11/2012.
Filed Date: 7/22/13.
Accession Number: 20130722–5074.
Comments Due: 5 p.m. ET 8/21/13.

Docket Numbers: ER13–90–002.
Applicants: Duquesne Light Company, PJM Interconnection, L.L.C.
Description: PJM TOs Filing in Compliance with Cost Allocation Directives of 3/22/2013 Order to be effective 2/1/2013.
Filed Date: 7/22/13.
Accession Number: 20130722–5079.
Comments Due: 5 p.m. ET 8/21/13.

Docket Numbers: ER13–187–003.
Applicants: Midcontinent Independent System Operator, Inc.
Description: 07–22–2013 MISO Order 1000 Regional Compliance to be effective 6/1/2013.
Filed Date: 7/22/13.
Accession Number: 20130722–5107.
Comments Due: 5 p.m. ET 8/21/13.

Docket Numbers: ER13–187–004.
Applicants: Midcontinent Independent System Operator, Inc.
Description: 07–22–13 Order 1000 Regional Compliance TOA to be effective 6/1/2013.
Filed Date: 7/22/13.
Accession Number: 20130722–5109.
Comments Due: 5 p.m. ET 8/21/13.

Docket Numbers: ER13–1998–000.
Applicants: Florida Power & Light Company.
Description: FPL Revisions to FPL Rate Schedule FERC No. 322 to be effective 1/1/201.
Filed Date: 7/22/13.
Accession Number: 20130722–5075.
Comments Due: 5 p.m. ET 8/12/13.

Docket Numbers: ER13–1999–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: 07–22–13 Southern LRZ Filing to be effective 9/27/2013.
Filed Date: 7/22/13.
Accession Number: 20130722–5104.
Comments Due: 5 p.m. ET 8/12/13.

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: July 23, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–18116 Filed 7–26–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP13–1089–000.
Applicants: Golden Pass Pipeline LLC.
Description: GPPL Order 776 Compliance Filing to be effective 10/1/2013.
Filed Date: 7/23/13.
Accession Number: 20130723–5000.
Comments Due: 5 p.m. ET 8/5/13.

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.

Filings in Existing Proceeding

Docket Numbers: RP13–886–001.
Applicants: Southern Natural Gas Company, L.L.C..
Description: Rate Case Settlement—2013 Implementation to be effective 9/1/2013.
Filed Date: 7/19/13.
Accession Number: 20130719–5030.
Comments Due: 5 p.m. ET 7/31/13.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

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: July 23, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–18117 Filed 7–26–13; 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: ER13–265–001.
Applicants: Nevada Power Company.
Description: Rate Schedule No. 134 Interim Balancing Area Services—Settlement Agmt—VEA to be effective 11/1/2012.
Filed Date: 7/19/13.
Accession Number: 20130719–5000.
Comments Due: 5 p.m. ET 8/9/13.

Docket Numbers: ER13–1996–000.
Applicants: Southwest Power Pool, Inc.
Description: Revisions to Attachment T Updating City Utilities of Springfield, MO to be effective 10/1/2013.
Filed Date: 7/19/13.
Accession Number: 20130719–5067.
Comments Due: 5 p.m. ET 8/9/13.

Docket Numbers: ER13–1997–000.
Applicants: Southern California Edison Company.
Description: Letter Agreement Between LADWP and SCE for Fringe Additional Facilities to be effective 7/16/2013.
Filed Date: 7/19/13.
Accession Number: 20130719–5086.
Comments Due: 5 p.m. ET 8/9/13.

Take notice that the Commission received the following PURPA 210(m)(3) filings:

Docket Numbers: QM13–2–001.
Applicants: PPL Electric Utilities Corporation.
Description: Amendment to May 17, 2013 Application to Terminate Purchase Obligation of PPL Electric Utilities Corporation.
Filed Date: 7/19/13.
Accession Number: 20130719–5050.
Comments Due: 5 p.m. ET 8/16/13.

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: July 19, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–18040 Filed 7–26–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP13–1085–000.
Applicants: Natural Gas Pipeline Company of America.
Description: Tenaska Neg Rate to be effective 7/18/2013.
Filed Date: 7/18/13.
Accession Number: 20130718–5106.
Comments Due: 5 p.m. e.t. 7/30/13.

Docket Numbers: RP13–1086–000.
Applicants: Maritimes & Northeast Pipeline, L.L.C.
Description: Non-Conforming Backstop Agreement to be effective 8/18/2013.
Filed Date: 7/18/13.
Accession Number: 20130718–5107.
Comments Due: 5 p.m. e.t. 7/30/13.

Docket Numbers: RP13–1087–000.
Applicants: Natural Gas Pipeline Company of America.
Description: Tenaska—RO No. 142397 Neg Rate Filing to be effective 7/18/2013.
Filed Date: 7/18/13.
Accession Number: 20130718–5111.
Comments Due: 5 p.m. e.t. 7/30/13.

Docket Numbers: RP13–1088–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: Non-Conforming Letter Agreement Filing to be effective 8/19/2013.
Filed Date: 7/18/13.
Accession Number: 20130718–5142.
Comments Due: 5 p.m. e.t. 7/30/13.

Docket Numbers: RP13–786–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: Refund Report.
Filed Date: 7/18/13.
Accession Number: 20130718–5077.
Comments Due: 5 p.m. e.t. 7/30/13.

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: July 19, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–18041 Filed 7–26–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–7188–000]

Marricle, David; Notice of Filing

Take notice that on July 19, 2013, David Marricle submitted for filing, an application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act (FPA), 16 U.S.C. 825d(b), Part 45 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR part 45, and Order No. 664.[1]

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.

[1] *Commission AuthoriDeputy Secretary.zation to Hold Interlocking Positions,* 112 FERC ¶ 61,298 (2005) (Order No. 664); *order on reh'g,* 114 FERC ¶ 61,142 (2006) (Order No. 664–A).

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 August 9, 2013.

Dated: July 22, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–18044 Filed 7–26–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–1991–000]

Desert Sunlight 250, LLC; 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 Desert Sunlight 250, LLC'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 August 12, 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: July 23, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–18118 Filed 7–26–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD13–7–000]

Centralized Capacity Markets in Regional Transmission Organizations and Independent System Operators:Supplemental Notice of Technical Conference

As announced in the Notice issued on June 17, 2013,[1] the Federal Energy Regulatory Commission (Commission) staff will hold a technical conference on September 25, 2013 from 9:00 a.m. to approximately 5:00 p.m., to consider how current centralized capacity market

[1] Centralized Capacity Markets in Regional Transmission Organizations and Independent System Operators, Docket No. AD13–7–000 (June 17, 2013).

rules and structures are supporting the procurement and retention of resources necessary to meet future reliability and operational needs. The conference will be held at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A preliminary agenda for this conference is attached. This conference is free of charge and open to the public. Commission members may participate in the conference.

Those interested in speaking at the technical conference should notify the Commission by August 9, 2013 by completing the online form at the following Web page: *https://www.ferc.gov/whats-new/registration/cap-markets-09–25–13-speaker-form.asp.* At this Web page, please provide an abstract (700 character limit) of the issue(s) you propose to address. Due to time constraints, we expect to not be able to accommodate all those interested in speaking. If you have not already done so, those who plan to attend the technical conference are strongly encouraged to complete the registration form located at: *https://www.ferc.gov/whats-new/registration/cap-markets-09–25–13-form.asp.* There is no registration deadline to attend the conference.

Selected speakers will be notified as soon as possible and will be required to provide written comments by Friday, September 6, 2013. These comments should serve as the selected speakers' opening remarks. The discussion at the technical conference will focus on the written comments submitted by speakers and on questions from Staff and Commissioners.

The technical conference will not be transcribed. However, there will be a free webcast of the conference. The webcast will allow persons to listen to the technical conference, but not participate. Anyone with Internet access who wants to listen to the conference can do so by navigating to the Calendar of Events at *www.ferc.gov* and locating the technical conference on the Calendar. The technical conference will contain a link to its webcast. The Capitol Connection provides technical support for the webcast and offers the option of listening to the meeting via phone-bridge for a fee. If you have any questions, visit *www.CapitolConnection.org* or call 703–993–3100.[2]

Information on the technical conference will be posted on the Calendar of Events on the Commission's Web site, *http://www.ferc.gov/Event Calendar/EventDetails.aspx?ID=6944&CalType=%20&CalendarID=116&Date=09/25/2013&View=Listview,* prior to the conference.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–502–8659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For more information about the technical conference, please contact: Shiv Mani (Technical Information), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8240, Shiv.Mani@ferc.gov. Eric Eversole (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8697, Eric.Eversole@ferc.gov.

Sarah McKinley (Logistical Information), Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8004, Sarah.McKinley@ferc.gov.

Dated: July 19, 2013.

Kimberly D. Bose,

Secretary.

Centralized Capacity Markets in Regional Transmission Organizations and Independent System Operators Docket No. AD13–7–000

September 25, 2013

Preliminary Agenda

9:00 am–9:15 am Welcome and opening remarks

9:15 am–10:45 am The role of centralized capacity markets in assuring resource adequacy

In the first morning session, ISO New England, Inc., PJM Interconnection, L.L.C., and New York Independent System Operator will provide a brief overview of the goals and basic structure of their respective centralized capacity markets, including a discussion of why each region chose key market design elements and how each market is achieving its stated goals.

10:45 am–12:15 pm Mechanics of current centralized capacity markets

The second morning session will address basic design elements of centralized capacity markets, such as the forward commitment period, the demand curve and the establishment of locational and regional planning requirements, as well as the interaction among these design elements with energy and ancillary services markets. Panelists will be asked to address these issues in the context of the goals and objectives of the centralized capacity markets.

12:15 pm–1:15 pm Lunch

1:15 pm–2:45 pm Adapting to industry changes

The first afternoon session builds on the previous panel and introduces for discussion the impact of State and Federal policy considerations and emerging technologies on the goals and objectives of centralized capacity markets. Panelists will be asked to identify current and potential policy drivers (e.g., environmental regulations, renewable portfolio standards, state resource planning policies, emerging technologies and fuels such as shale gas, price responsive demand and electric storage) and address their impacts on centralized capacity markets.

2:45 pm–3:00 pm Break

3:00 pm–4:30 pm Considerations for the future

The second afternoon session will address potential future directions for centralized capacity markets as a resource adequacy mechanism. This panel will focus on whether new mechanisms and design tools could prospectively augment, supplement or substitute for typical centralized capacity market design elements in order to meet current and anticipated market challenges, and how capacity markets can accommodate evolving market developments and future risks.

4:30–5:00 pm Wrap up and closing remarks

[FR Doc. 2013–18063 Filed 7–26–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–522–000]

Keys Energy Center, LLC; Notice of Petition for Declaratory Order

Take notice that on July 17, 2013, Keys Energy Center, LLC (Keys), pursuant to section 207(a)(2) of the Federal Energy Regulatory Commission's (Commission) Rules of

[2] The webcast will continue to be available on the Calendar of Events on the Commission's Web site *www.ferc.gov* for three months after the conference.

Practice and Procedure, 18 CFR 385.207 (2013) filed a petition for declaratory order requesting the Commission issue an order stating that Keys'proposed pipeline, which will consist of one 7.5 long mile segment of 20-inch pipe, is non-jurisdictional inlet pipe that is necessary and integral part of its natural gas-fired electricity generating plant (Keys Plant).

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 August 16, 2013.

Dated: July 22, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–18042 Filed 7–26–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL13–77–000]

Catalina Solar, LLC; Notice of Petition for Declaratory Order

Take notice that on July 16, 2013, pursuant to sections 207 and 212 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure 18 CFR 385.207 and 385.212, Catalina Solar, LLC filed a petition for declaratory order requesting the Commission disclaim jurisdiction under section 201 of the Federal Power Act over Catalina Solar because it will become the passive owner and lessor of a solar-powered generating facility following the consummation of a two-step structured lease financing transaction, as authorized by the Commission.

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 August 15, 2013.

Dated: July 22, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–18043 Filed 7–26–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14528–000]

Davis Hydro, LLC Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On June 4, 2013, the Davis Hydro, LLC, 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 Lake Davis Hydro Project (project) to be located at Lake Davis on Big Grizzly Creek, near the town of Portola, Plumas 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 utilize the existing fish egg filtering platform owned by the California Department of Fish and Wildlife, located below the Grizzly Valley dam on Big Grizzly Creek. The project would consist of the following: (1) A powerhouse containing one 320-kilowatt turbine; (2) a 2,208-foot-long transmission line extending from the powerhouse and interconnecting with existing transmission lines; and (3) appurtenant facilities. The proposed project would have a total installed capacity of 0.32 megawatts and generate an estimated average annual energy production of 2,000 megawatt-hours.

Applicant Contact: Mr. Richard Ely, Davis Hydro, LLC, 27264 Meadowbrook Drive, Davis, California 95618, phone: (530) 753–8864.

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–14497) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: July 22, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–18064 Filed 7–26–13; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 13–178; DA 13–1540]

Auction of H Block Licenses in the 1915–1920 MHz and 1995–2000 MHz Bands; Comment Sought on Competitive Bidding Procedures for Auction 96

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the intention to hold an auction of H Block licenses in the 1915–1920 and 1995–2000 MHz bands. This document also seeks comment on competitive bidding procedures for Auction 96.

DATES: Comments are due on or before August 5, 2013, and reply comments are due on or before August 16, 2013.

ADDRESSES: All filings in response to this public notice must refer to AU Docket No. 13–178. The Wireless Telecommunications Bureau strongly encourages interested parties to file comments electronically, and request that an additional copy of all comments and reply comments be submitted electronically to the following address: *auction96@fcc.gov.* Comments may be submitted by any of the following methods:

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

■ Federal Communications Commission's Web site: *http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.

■ Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Attn: WTB/ASAD, Office of the Secretary, Federal Communications Commission.

■ All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

■ Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

■ U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

■ People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

FOR FURTHER INFORMATION CONTACT: *Wireless Telecommunications Bureau, Auctions and Spectrum Access Division:* For auction legal questions: Valerie Barrish at (202) 418–0660; for general auction questions: Jeff Crooks at (202) 4188–0660 or Debbie Smith or Linda Sanderson at (717) 338–2868. *Broadband Division:* For H Block service rule questions: Matthew Pearl (legal) or Janet Young (technical) at (202) 418–2487.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction 96 Comment Public Notice* released on July 15, 2013. The complete text of the *Auction 96 Comment Public Notice,* including all attachments and related Commission documents, is available for public inspection and copying from 8:00 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The *Auction 96 Comment Public Notice and its attachments,* as well as related Commission documents, also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, fax 202–488–5563, or you may contact BCPI at its Web site: http://www.BCPIWEB.com. When ordering documents from BCPI, please provide the appropriate FCC document number, for example, DA 13–1540. The *Auction 96 Comment Public Notice* and related documents also are available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/96/*, or by using the search function for AU Docket No. 13–178 on the Commission's Electronic Comment Filing System (ECFS) Web page at *http://www.fcc.gov/cgb/ecfs/.*

I. Introduction

1. The Wireless Telecommunications Bureau (Bureau) announces its intention to hold an auction of licenses in the 1915–1920 MHz (Lower H Block) and 1995–2000 MHz (Upper H Block) bands (collectively, the H Block), and seeks comment on the procedures to be used for this auction. The staff will be prepared to conduct this auction, which will be designated as Auction 96, by or as early as January 14, 2014.

2. The Commission is offering the licenses in Auction 96 pursuant to the Middle Class Tax Relief and Job Creation Act of 2012 (Spectrum Act). The Spectrum Act requires, among other things, that the Commission allocate for commercial use and license spectrum in the H Block using a system of competitive bidding no later than February 23, 2015.

II. Licenses To Be Offered In Auction 96

A. Description of Licenses

3. In the *H Block Report and Order,* FCC 13–88, the Commission concluded that licenses for H Block spectrum should be awarded on an Economic Areas (EA) basis in all areas, including the Gulf of Mexico. Auction 96 will offer one license for each of the 176 EAs. The Lower H Block and Upper H Block frequencies will be licensed as

paired 5 megahertz blocks, with each license having a total bandwidth of 10 megahertz; 1915–1920 MHz for mobile and low power fixed (i.e., uplink) operations and 1995–2000 MHz for base station and fixed (i.e., downlink) operations. A complete list of the licenses offered in Auction 96 is available in Attachment A to the *Auction 96 Comment Public Notice.*

B. Cost-Sharing Obligations

4. The spectrum in the Lower H Block and the Upper H Block is subject to cost-sharing requirements related to the past clearing and relocation of incumbent users from these bands. Consistent with its long-standing policy that cost-sharing obligations for both the Lower H Block and the Upper H Block be apportioned on a *pro rata* basis against the relocation costs attributable to the particular band, the Commission adopted cost-sharing rules in the *H Block Report and Order* that require H Block licensees to pay a *pro rata* share of expenses previously incurred by UTAM, Inc. (UTAM) and by Sprint Nextel, Inc. (Sprint) in clearing incumbents from the Lower H Block and the Upper H Block, respectively.

5. Under the cost sharing formula adopted in the *H Block Report and Order,* the reimbursement amount owed to UTAM with respect to the 1915–1920 MHz band will be determined by dividing the gross winning bid for an H Block license by the sum of the gross winning bids for all H Block licenses won in Auction 96 and then multiplying that result by $12,629,857—the total amount owed to UTAM for clearing the Lower H Block. The *H Block Report and Order* adopted the same cost-sharing formula for the Upper H Block (1995–2000 MHz band) related to Sprint's clearing costs of $94,875,516.

6. Winning bidders are required to pay UTAM and Sprint, as applicable, the reimbursement amounts owed within thirty days after the grant of the winning bidders' long-form license applications.

7. The Commission also adopted a contingency plan in the *H Block Report and Order* that will be triggered in the unlikely event that licenses won in this auction cover less than forty percent of the U.S. population. If such an event occurs, winning bidders—in this auction and in subsequent H Block auctions—will be required to timely pay UTAM and Sprint, respectively, their *pro rata* share calculated by dividing the population of the individual EA by the total U.S. population and then multiplying this quotient by $12,629,857 for UTAM and by $94,875,516 for Sprint.

8. The cost-sharing rules and contingency plan adopted in the *H Block Report and Order* are designed to ensure that UTAM and Sprint receive full reimbursement after this auction by effectively apportioning the reimbursement costs associated with any unsold H Block licenses among the winning bidders, except in cases where the contingency plan is triggered or a successful bidder's long-form application is not filed or granted. If any of the licenses won in this auction are not awarded, the license at issue will be deemed to have triggered a reimbursement obligation that will be paid by the licensee acquiring the license in a subsequent auction.

III. Due Diligence

9. Each potential bidder is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the licenses that it is seeking in this auction. Each bidder is responsible for assuring that, if it wins a license, it will be able to build and operate facilities in accordance with the Commission's rules. The Commission makes no representations or warranties about the use of this spectrum for particular services. Each applicant should be aware that a Commission auction represents an opportunity to become a Commission licensee, subject to certain conditions and regulations. A Commission auction does not constitute an endorsement by the Commission of any particular service, technology, or product, nor does a Commission license constitute a guarantee of business success.

10. An applicant should perform its due diligence research and analysis before proceeding, as it would with any new business venture. Each potential bidder should perform technical analyses and/or refresh any previous analyses to assure itself that, should it become a winning bidder for any Auction 96 license, it will be able to build and operate facilities that will fully comply with all applicable technical and regulatory requirements. The Bureau strongly encourages each applicant to inspect any prospective transmitter sites located in, or near, the geographic area for which it plans to bid; confirm the availability of such sites; and familiarize itself with the Commission's rules regarding the National Environmental Policy Act.

11. The Bureau strongly encourages each applicant to conduct its own research prior to Auction 96 in order to determine the existence of pending administrative, rulemaking, or judicial proceedings that might affect its decisions regarding participation in the auction.

12. The Bureau strongly encourages participants in Auction 96 to continue such research throughout the auction. The due diligence considerations mentioned in the *Auction 96 Comment Public Notice* do not constitute an exhaustive list of steps that should be undertaken prior to participating in this auction. As always, the burden is on the potential bidder to determine how much research to undertake, depending upon the specific facts and circumstances related to its interests.

IV. Bureau Seeks Comment on Auction Procedures

13. The Commission directed the Bureau, under its existing delegated authority, to seek comment on a variety of auction-specific procedures prior to the start of each auction. The Bureau therefore seeks comment on the following issues relating to the conduct of Auction 96.

A. Auction Design

i. Simultaneous Multiple-Round Auction—With or Without Package Bidding

14. The Bureau proposes to conduct Auction 96 using a simultaneous multiple-round (SMR) auction format. An SMR auction offers every license for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids. Typically, bidding remains open on all licenses until bidding stops on every license.

15. The Bureau additionally proposes to incorporate provisions for a simple form of package bidding into the simultaneous multiple-round auction. In particular, the Bureau proposes to use a form of package bidding called hierarchical package bidding (HPB) in which, in addition to being able to bid on individual licenses, bidders would also be able to bid on certain tiered, non-overlapping packages of licenses. The Commission concluded in the *H Block Report and Order* that the H Block spectrum should be licensed on an EA basis. Consistent with that conclusion, the Bureau proposes that the basic bidding tier under HPB be individual EA licenses. The *H Block Report and Order* also noted that the decision to license at the EA level would facilitate aggregations at the larger Major Economic Area (MEA) and Regional Economic Area Grouping (REAG) levels. The Bureau therefore seeks comment on the use of predefined packages of EAs in MEAs and potentially larger packages such as REAGs, as well as a package

comprising all markets in the contiguous 48 states. The Bureau seeks more detailed comment on its proposals and on various alternatives.

16. By permitting only non-overlapping packages at each tier (for example, a given EA could be included in only one MEA, which in turn could be included in only one REAG), HPB considerably simplifies bidder strategy and computational complexity compared to some other forms of package bidding. The pricing rules used with HPB are transparent and make it clear to bidders how package bids are evaluated relative to individual bids, hence making it easier than in more complex package bidding formats for bidders interested in individual licenses to compete with bidders interested in packages. As a result of these and other advantages, HPB and similar packaging formats have performed well in tests of overall auction efficiency. Auction 96 is the first H Block auction and a single complete set of nationwide EA licenses is available. Consequently, offering predefined packages might allow for significant economies of scale that may well correspond to a variety of business plans. Bidders that wish smaller or more tailored aggregations than the allowable predefined packages would be able to bid on individual EAs instead of or in addition to the predefined packages.

17. The Bureau used a variant of HPB in Auction 73 under considerably different circumstances. Most notably, in Auction 73 the Bureau implemented SMR bidding across the five available blocks of licenses and determined that package bidding would be permitted in only one of the blocks. Further, if the aggregate reserve price that was applicable to the package bidding block in Auction 73 was not met, the performance and public interest requirements pertaining to the licenses in the block would change significantly. As a result, special procedures were needed to allow bidders to shift their bidding across the multiple available blocks, the rest of which were subject to a different bidding format. Those complicating factors—and their implications for bidder strategies—are not present in Auction 96, which includes only a single block of licenses. Hence, the bidding rules implementing HPB would be considerably simpler than those for Auction 73.

18. Briefly, HPB as proposed for Auction 96 could be implemented as follows. The Bureau would determine the predefined packages according to a non-overlapping hierarchical structure, with an initial tier consisting of individual EA licenses. The Bureau could adopt a two-tier structure composed simply of the initial tier of EAs and MEA packages. Any subsequent tiers could consist of non-overlapping packages of the licenses in the initial tier and all subsidiary tiers. For example, if the Bureau were to adopt MEA, REAG, and nationwide packages, these packages would all nest accordingly (e.g., EAs nest to MEAs, MEAs nest to REAGs, and REAGs nest to the national package). The winning set of bids could consist of bids from various tiers, as long as each license is included in only one winning bid. That is, in the four-tier construct, the winning set could potentially include individual licenses in one part of the country, MEA packages in other areas, and potentially REAG packages as well, provided the value of all of these individual and package bids exceeds a bid on a nationwide package. A bidder may place bids on any combination of individual licenses or packages.

19. After each round, the Commission would determine the combination of package and/or single license bids that yields the highest gross amount, and those bids would become provisionally winning. When determining provisionally winning bids, the FCC Auction System would consider each bidder's highest bid on each license or package placed up to that point in the auction, regardless of whether the bids were provisionally winning after the rounds in which they were placed. Considering these bids from previous rounds makes it possible for new bids on individual licenses to combine with other bids in order to compete with bids on packages. The provisionally winning bids would be determined by comparing aggregate gross bid amounts, at each tier, for various combinations of package and individual license bids.

20. The Bureau seeks comment generally on its proposed simultaneous multiple-round auction format with hierarchical package bidding. Would HPB balance aggregation needs with tractability, transparency, and simplicity? The Bureau seeks comment also on what packages should be available for various tiers. Should the Bureau allow a simple structure of EAs and MEAs, or some other set of tiers of MEAs, REAGs, and/or a nationwide package? Alternatively, would the Bureau standard SMR auction format without package bidding sufficiently accommodate economies of scale or other complementarities? If the Bureau does not implement package bidding for Auction 96, it proposes to conduct the auction using standard SMR procedures.

21. The Bureau proposes to conduct Auction 96 as a single round sealed bid auction. While not as common for spectrum auctions as the SMR format, the Bureau has previously used the single round sealed bid format. The Bureau proposes this alternative because Auction 96 offers licenses in only a single spectrum block and a single round auction may simplify the process for bidders and reduce the costs of auction participation. In a single round format the Bureau could also offer one or more tiers of non-overlapping packages for HPB. The Bureau seeks comment on any design features of the sealed bid format (e.g., first-price or second-price). The Bureau seeks comment on this alternative proposal and on any other auction formats it should consider for Auction 96.

ii. Anonymous Bidding

22. In several prior Commission auctions, the Bureau has adopted procedures to limit the disclosure of certain bidder-specific information until after the auction. Consistent with that practice, the Bureau proposes to adopt certain procedures for limited information disclosure or anonymous bidding for Auction 96. Specifically, the Bureau proposes to withhold, until after the close of bidding, public release of (1) bidders' license selections on their short-form applications (FCC Form 175), (2) the amounts of bidders' upfront payments and bidding eligibility, and (3) information that may reveal the identities of bidders placing bids and taking other bidding-related actions.

23. Under these proposed limited information procedures, the amount of every bid placed and whether a bid was withdrawn would be disclosed after the close of every round, but the identities of bidders placing specific bids or withdrawals (if permitted) and the net bid amounts would not be disclosed until after the close of the auction.

24. Bidders would have access to additional information about their own bids. For example, bidders would be able to view their own level of eligibility, before and during the auction, through the FCC Auction System.

25. Moreover, for the purpose of complying with 47 CFR 1.2105(c), which prohibits certain communications between applicants (formerly referred to as the anti-collusion rule), applicants would be made aware of other applicants with which they will not be permitted to cooperate, collaborate, or communicate—including discussing bids, bidding strategies, or post-auction market structure. Specifically, the Bureau would notify separately each applicant with a short-form application

on file for participation in Auction 96 whether applicants with short-form applications to participate in a pending auction, including but not limited to Auction 96, have applied for licenses in any of the same or overlapping geographic areas as that applicant.

26. After the close of bidding, bidders' license selections, upfront payment amounts, bidding eligibility, bids, and other bidding-related actions would be made publicly available.

27. The Bureau seeks comment on the details of its proposal for implementing anonymous bidding in Auction 96. The Bureau also seeks comment on alternatives to the use of anonymous bidding procedures for Auction 96. When the Commission originally proposed limited information disclosure procedures, it did so in response to analysis suggesting that under certain circumstances the competitiveness and economic efficiency of a simultaneous multiple-round auction may be enhanced if such information is withheld until after the close of the auction. The Bureau encourages parties to provide information about the benefits and costs of complying with limited information procedures as compared with the benefits and costs of alternative procedures that would provide for the disclosure of more information on bidder identities and interests in the auction. If commenters believe that the Bureau should not adopt procedures to limit the disclosure of certain bidder-specific information until after the auction, they should explain their reasoning.

B. Auction Structure

i. Bidding Rounds

28. Under the Bureau's proposal to use an SMR format, Auction 96 will consist of sequential bidding rounds. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction.

29. The Commission will conduct Auction 96 over the Internet using the FCC Auction System. Bidders will also have the option of placing bids by telephone through a dedicated, toll-free Auction Bidder Line. The toll-free telephone number for the Auction Bidder Line will be provided to qualified bidders prior to the start of the auction.

30. The Bureau proposes to retain the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. Under this proposal, the Bureau may change the amount of time for bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors. The Bureau seeks comment on this proposal. Commenters on this issue should address the role of the bidding schedule in managing the pace of the auction, specifically discussing the tradeoffs in managing auction pace by bidding schedule changes, by changing the activity requirements or bid amount parameters, or by using other means.

ii. Stopping Rule

31. The Bureau has discretion to establish stopping rules before or during multiple round auctions in order to complete the auction within a reasonable time. For Auction 96, under its SMR proposal, the Bureau proposes to employ a simultaneous stopping rule approach. Using a simultaneous stopping rule means all licenses remain available for bidding until bidding stops on every license. More specifically, bidding will close on all licenses and packages after the first round in which no bidder submits any new bids, applies a proactive waiver, or withdraws any provisionally winning bids (if withdrawals are permitted). Thus, under the Bureau's SMR proposal, unless the Bureau announces alternative stopping procedures, the simultaneous stopping rule will be used in this auction, and bidding will remain open on all licenses until bidding stops on every license, regardless of whether bids are placed on individual licenses or packages of licenses. Consequently, it is not possible to determine in advance how long Auction 96 will last.

32. Further, the Bureau proposes to retain the discretion to exercise any of the following options during Auction 96: (a) Use a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all licenses after the first round in which no bidder applies a waiver, withdraws a provisionally winning bid, or places any new bids on a license or package for which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license or package for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule; (b) Use a modified version of the simultaneous stopping rule that would close the auction for all licenses after the first round in which no bidder applies a waiver, withdraws a provisionally winning bid, or places any new bids on a license or package that is not FCC held. Thus, absent any other bidding activity, a bidder placing a new bid on a license that does not already have a provisionally winning bid (an FCC-held license) would not keep the auction open under this modified stopping rule; (c) Use a modified version of the simultaneous stopping rule that combines (a) and (b); (d) Declare that the auction will end after a specified number of additional rounds (special stopping rule). If the Bureau invokes this special stopping rule, it will accept bids in the specified final round(s), after which the auction will close; or (e) Keep the auction open even if no bidder places any new bids, applies a waiver, or withdraws (if withdrawals are permitted) any provisionally winning bids. In this event, the effect will be the same as if a bidder had applied a waiver. The activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a waiver.

33. The Bureau proposes to exercise these options only in certain circumstances, for example, where the auction is proceeding unusually slowly or quickly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time or will close prematurely. Before exercising these options, the Bureau is likely to attempt to change the pace of the auction by, for example, changing the number of bidding rounds per day and/or the minimum acceptable bids. The Bureau proposes to retain the discretion to exercise any of these options with or without prior announcement during the auction. The Bureau seeks comment on these proposals.

iii. Information Relating to Auction Delay, Suspension, or Cancellation

34. For Auction 96, the Bureau proposes that it may delay, suspend, or cancel the auction in the event of a natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. The Bureau will notify participants of any such delay, suspension or cancellation by public notice and/or through the FCC Auction System's announcement function. If the auction is delayed or suspended, the Bureau may, in its sole discretion, elect to resume the auction starting from the beginning of the current round or from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The

Bureau emphasize that it will exercise this authority solely at its discretion, and note that the exercise of the Bureau's authority in this regard is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. The Bureau seeks comment on this proposal.

C. Auction Procedures

i. Upfront Payments and Bidding Eligibility

35. The Bureau has delegated authority and discretion to determine an appropriate upfront payment for each license being auctioned, taking into account such factors as the efficiency of the auction process and the potential value of similar licenses. An upfront payment is a refundable deposit made by each bidder to establish its eligibility to bid on licenses. Upfront payments that are related to the specific licenses being auctioned protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction. For Auction 96, the Bureau proposes to make the upfront payments equal to the proposed minimum opening bids. The upfront payments for each license are set forth in Attachment A to the *Auction 96 Comment Public Notice.* The Bureau seeks comment on this proposal.

36. The Bureau further proposes that the amount of the upfront payment submitted by a bidder will determine its initial bidding eligibility in bidding units. The Bureau proposes to assign each license a specific number of bidding units, equal to one bidding unit per dollar of the upfront payment proposed for the license. The specific bidding units for each license are set forth in Attachment A to the *Auction 96 Comment Public Notice.* The number of bidding units for a given license is fixed and does not change during the auction as prices change. A bidder's upfront payment is not attributed to specific licenses or packages of licenses. Rather, a bidder may place bids on any combination of the licenses it selected on its short-form application (FCC Form 175), provided that the total number of bidding units associated with those licenses does not exceed its current eligibility. A bidder cannot increase its eligibility during the auction; it can only maintain its eligibility or decrease its eligibility. Thus, in calculating its upfront payment amount and hence its initial bidding eligibility, an applicant must determine the maximum number of bidding units on which it may wish to bid (or hold provisionally winning bids) in any single round and submit an upfront payment amount covering that total number of bidding units. The Bureau requests comment on these proposals.

37. Under HPB procedures, the number of bidding units for a package equals the sum of the bidding units for the licenses in that package. The bidding units for a license and a package including that license will be counted only once in determining bidding eligibility. Thus, when an applicant calculates its upfront payment amount by determining the maximum number of bidding units on which it may wish to bid in any single round (in addition to its current provisionally winning bids), it should count the bidding units associated with each license only once even if it may wish to bid on an individual license and a package containing that license. The Bureau seeks comment on these proposals.

ii. Activity Rule

38. In order to ensure that an SMR auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. A bidder's activity in a round will be the sum of the bidding units associated with any licenses upon which it places bids during the current round and the bidding units associated with any licenses for which it holds provisionally winning bids placed in previous rounds. The bidding units associated with a given license will be counted only once in a bidder's activity calculation for the round, even if the bidder places multiple bids including the license—for example, places a bid on a license and a bid on a package including that license. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

39. The Bureau proposes to divide the auction into at least two stages, each characterized by a different activity requirement. The auction will start in Stage One. The Bureau proposes to advance the auction to the next stage by announcement during the auction. In exercising this discretion, the Bureau will consider a variety of measures of auction activity, including but not limited to the percentage of bidding units associated with licenses on which there are new bids, the number of new bids, and the increase in revenue. The Bureau seeks comment on these proposals.

40. The Bureau proposes the following activity requirements, while noting again that the Bureau retains the discretion to change stages unilaterally by announcement during the auction. Stage One: In each round of the first stage of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on bidding units associated with licenses representing at least 80 percent of its current bidding eligibility, counting the bidding units associated with a bid on an individual license and a package including that license only once. Failure to maintain the required activity level will result in the use of an activity rule waiver or a reduction in the bidder's bidding eligibility for the next round of bidding. During Stage One, a bidder's reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity by five-fourths (5/4). Stage Two: In each round of the second stage, a bidder desiring to maintain its current bidding eligibility is required to be active on 95 percent of its current bidding eligibility. Failure to maintain the required activity level will result in the use of an activity rule waiver or a reduction in the bidder's bidding eligibility for the next round of bidding. During Stage Two, a bidder's reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity by twenty-nineteenths (20/19).

41. The Bureau requests comment on these activity requirements. Under this proposal, the Bureau will retain the discretion to change the activity requirements during the auction. For example, the Bureau could decide to add an additional stage with a higher activity requirement, not to transition to Stage Two if it believes the auction is progressing satisfactorily under the Stage One activity requirement, or to transition to Stage Two with an activity requirement that is higher or lower than the 95 percent proposed herein. If the Bureau exercises this discretion, it will alert bidders by announcement in the FCC Auction System.

iii. Activity Rule Waivers and Reducing Eligibility

42. When a bidder's eligibility in the current round is below the required minimum level, it may preserve its current level of eligibility through an activity rule waiver. An activity rule waiver applies to an entire round of bidding, not to a particular bid. Activity rule waivers, which can be either proactive or automatic, are principally a

mechanism for a bidder to avoid the loss of bidding eligibility in the event that exigent circumstances prevent it from bidding in a particular round.

43. The FCC Auction System assumes that a bidder that does not meet the activity requirement would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round in which a bidder's activity level is below the minimum required unless (1) the bidder has no activity rule waivers remaining, or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the activity requirement. If a bidder has no waivers remaining and does not satisfy the required activity level, the bidder's current eligibility will be permanently reduced, possibly curtailing or eliminating the ability to place additional bids in the auction.

44. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the reduce eligibility function in the FCC Auction System. In this case, the bidder's eligibility is permanently reduced to bring it into compliance with the activity rule. Reducing eligibility is an irreversible action; once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility, even if the round has not yet closed.

45. Under the proposed simultaneous stopping rule, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively applies an activity rule waiver (using the apply waiver function in the FCC Auction System) during a bidding round in which no bids are placed or withdrawn, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver applied by the FCC Auction System in a round in which there are no new bids, withdrawals, or proactive waivers will not keep the auction open. A bidder cannot apply a proactive waiver after bidding in a round, and applying a proactive waiver will preclude it from placing any bids in that round. Applying a waiver is irreversible; once a proactive waiver is submitted, it cannot be unsubmitted, even if the round has not yet closed.

46. Consistent with recent Commission auctions, the Bureau proposes that each bidder in Auction 96 be provided with a total of three activity rule waivers that may be used at the bidder's discretion during the course of the auction. The Bureau seeks comment on this proposal.

iv. Reserve Price and Minimum Opening Bids

47. The Commission has directed the Bureau to seek comment on the use of a minimum opening bid amount and/or reserve price prior to the start of each auction.

48. Normally, a reserve price is an absolute minimum price below which an item or items will not be sold in a given auction. If a reserve price is utilized, the specific amount of the reserve price may be disclosed or undisclosed. A minimum opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which no bids are accepted. It is generally used to accelerate the competitive bidding process. It is possible for the minimum opening bid and the reserve price to be the same amount.

49. Among other factors the Bureau must consider in deciding whether to employ either or both of these mechanisms is the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, the extent of interference with other spectrum bands, and any other relevant factors that could have an impact on the spectrum being auctioned.

a. Reserve Price

50. The Commission is statutorily obliged to consider and balance a variety of public interests and objectives when establishing service rules and licensing procedures with respect to the public spectrum resource. These objectives include promoting recovery for the public a portion of the value of that resource. With respect to the H Block licenses being offered in Auction 96, the Spectrum Act specifically directs that proceeds from an auction of H Block spectrum be deposited into the Public Safety Trust Fund and be used for, among other things, funding (or reimbursement to the U.S. Treasury for the funding) of the nationwide, interoperable public safety broadband network by the First Responder Network Authority. In view of the various public interest objectives it must consider, the Bureau proposes to establish a reserve price for the H Block licenses offered in Auction 96. The Bureau further proposes to utilize an aggregate reserve price based on the aggregate of the gross bids for the H Block licenses, rather than license-by-license reserve prices. The Bureau seeks comment on these proposals.

51. The Bureaus seeks comment on the implementation of a reserve price. What factors should the Bureau consider in determining the amount of the reserve? Should the Bureau disclose the amount of the reserve price publicly prior to the auction, or should the reserve price amount remain undisclosed? The Bureau also seeks comment on how to evaluate unsold licenses in determining whether an aggregate reserve price has been met. The Bureau encourages commenters to address any additional specific issues related to the use of reserve prices. The Bureau asks that commenters describe in detail the specific factors that lead them to their conclusions.

b. Minimum Opening Bids

52. The Bureau proposes to establish minimum opening bid amounts for Auction 96. The Bureau believes a minimum opening bid amount, which has been used in other auctions, is an effective bidding tool for accelerating the competitive bidding process.

53. For Auction 96 the Bureau proposes to calculate minimum opening bid amounts on a license-by-license basis using a formula based on bandwidth and license area population, similar to the Bureau's approach in many previous spectrum auctions. The Bureau proposes to use a calculation based on $0.07 per megahertz of bandwidth per population (per MHz-pop). Additionally, the Bureau proposes to incorporate pricing information from previous auctions to tailor the results of its calculation to the relative prices for each EA. For this the Bureau proposes to create an index of the relative price of each EA using the winning bid amounts for the EA licenses of paired spectrum from Auctions 66 and 73. This modification to the use of $0.07 per MHz-pop results in amounts ranging from less than $0.01 per MHz-pop to $0.16 per MHz-pop. The Bureau further proposes a minimum of $1,000 per license. For the license covering the Gulf of Mexico, the Bureau proposes to set the minimum opening bid at $20,000. The minimum opening bid amount for a package will equal the sum of the minimum opening bid amounts for all of the licenses in that package.

54. The proposed minimum opening bid amount for each H Block license available in Auction 96, calculated pursuant to these procedures, is set forth in Attachment A of the *Auction 96 Comment Public Notice*. For packages, the Bureau proposes that the minimum opening bid amount of a package will equal the sum of the minimum opening

bid amounts for all of the licenses in that package.

55. The Bureau seeks comment on all of these proposals concerning minimum opening bids. If commenters believe that these minimum opening bid amounts will result in unsold licenses, or are not reasonable amounts, they should explain why this is so and comment on the desirability of an alternative approach. If a commenter requests a lower minimum opening bid amount for a specific license, it should justify the requested change in detail. If commenters disagree with the Bureau's proposed use of $0.07 per MHz-pop, its approach to tailoring minimum opening bid amounts to account for relative prices among the EAs in past auctions, or its selection of which past results to consider, the Bureau asks commenters to support their claims with valuation analyses and suggested minimum opening bid amount levels or formulas.

56. In establishing minimum opening bid amounts, the Bureau particularly seeks comment on factors that could reasonably have an impact on valuation of the licenses being auctioned, including the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the service areas, the size of the geographic service areas, issues of interference with other spectrum bands and any other relevant factors. The Bureau also seeks comment on whether the public interest would be served by having no minimum opening bid amount.

57. Commenters may also wish to address the general role of minimum opening bids in managing the pace of the auction. For example, commenters could compare using minimum opening bids—e.g., by setting higher minimum opening bids to reduce the number of rounds it takes licenses to reach their final prices—to other means of controlling auction pace, such as changes to bidding schedules or activity requirements.

v. Bid Amounts

58. The Bureau proposes that, in each round, an eligible bidder will be able to place a bid on a given license or package using one or more pre-defined bid amounts. Under this proposal, the FCC Auction System interface will list the acceptable bid amounts for each license and package. The Bureau proposes to calculate bid amounts in the following manner.

a. Minimum Acceptable Bids

59. The first of the acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a license will be equal to its minimum opening bid amount until there is a provisionally winning bid on the license itself or on a package that includes the license. The minimum acceptable bid amount for a package will be the sum of the minimum acceptable bid amounts for the licenses in the package. The Bureau proposes to calculate minimum acceptable bids based on current price estimates and an activity-based formula.

60. After there is a provisionally winning bid covering a license, the FCC Auction System will determine a current price estimate (CPE) for each license in each round as a basis for calculating minimum acceptable bids. The CPE is the provisionally winning bid for the license, or—if the provisionally winning bid covering the license is a package bid—a proxy for an individual license bid calculated as a share of the provisionally winning package bid. Attachment B to the *Auction 96 Comment Public Notice* describes in more detail the proposed mechanism for determining CPEs in an HPB auction format.

61. Once CPEs are calculated, minimum acceptable bids are then determined for each license as the amount of the CPE plus a percentage of the CPE. The percentage is calculated using an activity-based formula. In general, the percentage will be higher when many bidders are bidding on a license, or on a package containing a license, than when few bidders are bidding on a license.

62. The percentage of the CPE used to establish the minimum acceptable bid amount is calculated based on an activity index at the end of each round. The activity index is a weighted average of (a) the number of distinct bidders placing a bid on the license, including package bids, in that round, and (b) the activity index from the prior round. Specifically, the activity index is equal to a weighting factor times the number of bidders placing a bid covering the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round. The additional percentage is determined as one plus the activity index times a minimum percentage amount, with the result not to exceed a given maximum. The additional percentage is then multiplied by the CPE amount to obtain the minimum acceptable bid for the next round. The Bureau proposes initially to set the weighting factor at 0.5, the minimum percentage at 0.1 (10%), and the maximum percentage at 0.25 (25%). Hence, at these initial settings, the minimum acceptable bid for a license will be between ten percent and twenty-five percent higher than the CPE, depending upon the bidding activity covering the license. Equations and examples are shown in Attachment C of the *Auction 96 Comment Public Notice.* The Bureau seeks comment on whether to use this activity-based formula or a different approach. For example, should the Bureau use a fixed percentage above the CPE?

b. Additional Bid Amounts

63. The Bureau proposes to calculate any additional bid amounts using the minimum acceptable bid amount and a bid increment percentage—more specifically, by multiplying the minimum acceptable bid by one plus successively higher multiples of the bid increment percentage. If, for example, the bid increment percentage is 5 percent, the calculation of the first additional acceptable bid amount is (minimum acceptable bid amount) * (1 + 0.05), rounded, or (minimum acceptable bid amount) * 1.05, rounded; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.10, rounded; etc. The Bureau will round the results using the Commission's standard rounding procedures for auctions. The Bureau proposes initially to set the bid increment percentage at 5 percent.

64. For Auction 96 the Bureau proposes to begin the auction with three acceptable bid amounts per license (the minimum acceptable bid amount and two additional bid amounts) and one acceptable bid amount per package (the minimum acceptable bid amount and no additional bid amounts). More acceptable bidding amounts are proposed for licenses than for packages to help ensure that bids on individual licenses or on smaller packages can compete with bids on larger packages, even when there may not be active competition on all the separate components of the large package.

c. Bid Amount Changes

65. The Bureau retains the discretion to change the minimum acceptable bid amounts, the additional bid amounts, the number of acceptable bid amounts, and the parameters of the formulas used to calculate minimum acceptable bid amounts and additional bid amounts if the Bureau determines that circumstances so dictate. Further, the Bureau retains the discretion to do so on a license-by-license and package-by-package basis. The Bureau also retains the discretion to limit (a) the amount by

which a minimum acceptable bid for a license may increase compared with the corresponding CPE, and (b) the amount by which an additional bid amount may increase compared with the immediately preceding acceptable bid amount. For example, the Bureau could set a $10 million limit on increases in minimum acceptable bid amounts over CPEs. Thus, if the activity-based formula calculates a minimum acceptable bid amount that is $20 million higher than the CPE on a license, the minimum acceptable bid amount would instead be capped at $10 million above the CPE. The Bureau seeks comment on the circumstances under which it should employ such a limit, factors it should consider when determining the dollar amount of the limit, and the tradeoffs in setting such a limit or changing other parameters—such as changing the minimum acceptable bid percentage, the bid increment percentage, or the number of acceptable bid amounts. If the Bureau exercises this discretion, it will alert bidders by announcement in the FCC Auction System.

66. The Bureau seeks comment on its proposals. If commenters disagree with the Bureau's proposed acceptable bid amounts, they should suggest an alternative number of acceptable bid amounts to use at the beginning of the auction, an alternative number to use later in the auction, and whether the same number of bid amounts should be used for both licenses and packages. Commenters may wish to address the role of the minimum acceptable bids and the number of acceptable bid amounts in managing the pace of the auction and the tradeoffs in managing auction pace by changing the bidding schedule, activity requirements, or bid amounts, or by using other means.

vi. Provisionally Winning Bids

67. Provisionally winning bids are bids that would become final winning bids if the auction were to close in that given round. At the end of a bidding round, the FCC Auction System determines which combination of individual and package bids together yields the highest aggregate gross bid amount, taking into consideration each bidder's highest bid on each license or package submitted up to that point in the auction. These bids become the provisionally winning bids for the round.

68. If identical high bid amounts are submitted on a license or package in any given round (i.e., tied bids), the FCC Auction System will use a random number generator to select a single provisionally winning bid from among the tied bids. (The Auction System assigns a random number to each bid when the bid is entered. The tied bid with the highest random number wins the tiebreaker.) The remaining bidders, as well as the provisionally winning bidder, can submit higher bids in subsequent rounds. However, if the auction were to end with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid.

69. The set of provisionally winning bids is determined after every round in which new bids are submitted. The provisionally winning bids at the end of the auction become winning bids provided that any applicable reserve prices have been met. The Bureau reminds bidders that provisionally winning bids count toward activity for purposes of the activity rule.

vii. Bid Removal

70. For Auction 96, the Bureau proposes the following bid removal procedures. Before the close of a bidding round, a bidder has the option of removing any bid placed in that round. By removing a selected bid in the FCC Auction System, a bidder may effectively undo any bid placed within that round. Once a round closes, a bidder may no longer remove a bid. The Bureau seeks comment on this bid removal proposal.

viii. Bid Withdrawal

71. Under the Bureau's proposal to use SMR with HPB procedures, the Bureau proposes not to permit any bids, provisionally winning or otherwise, to be dropped or withdrawn from consideration in Auction 96. The benefits that bidders may realize from withdrawing bids in a typical SMR auction are minimized under the proposed package bidding format. In addition, in an SMR auction with package bidding there are significant risks associated with bid withdrawals that are not present in an SMR auction without package bidding. As the Commission has previously explained, under its typical SMR auction format without package bidding, allowing bid withdrawals facilitates efficient aggregation of licenses and the pursuit of backup strategies as information becomes available during the course of an auction. The Commission noted, however, that in some instances bidders may seek to withdraw bids for improper reasons. The Bureau, therefore, has discretion in managing the auction to limit the number of withdrawals to prevent any bidding abuses.

72. Under the HPB auction format that the Bureau proposes for Auction 96, the potential benefits of withdrawn or dropped bids in facilitating aggregations are far lower than they would be in a typical SMR auction. While the predetermined packages may not coincide with the all or nothing aggregation needs of all bidders, the hierarchical packages should significantly reduce the overall risk that bidders will win only some of the licenses in a desired set. Therefore, to the extent that package bids allow bidders to avoid such risk, withdrawals are less useful to bidders. Further, because the licenses available in Auction 96 consist of a single frequency block, bidders will not need to use withdrawals to pursue backup strategies in other blocks, as they sometimes have in other Commission spectrum auctions conducted with SMR procedures. At the same time, in an auction with package bidding, dropping bids from consideration can have negative effects that would not arise in a typical SMR auction. Withdrawals by one bidder on licenses subject to package bidding can be more disruptive to the bidding strategies of others than withdrawals on licenses not subject to package bidding. In a non-package bidding auction, whether a bid on a license becomes provisionally winning depends only upon the bids submitted for that license. In contrast, whether a bid becomes provisionally winning on a license subject to package bidding depends upon the bids submitted for that license, the bids submitted for the packages containing that license, and the bids submitted for other licenses in those packages. Consequently, a withdrawn bid on a license subject to package bidding has the potential to alter the composition of the provisionally winning set of bids, and may adversely affect other bidders. Moreover, because bidders interested in single licenses or smaller packages need their bids to combine with the bids by other bidders in order to be competitive with bids on larger packages, having even non-provisionally winning bids withdrawn from consideration can adversely affect their ability to compete. In addition, because CPEs for a license depend in part on package bids including the license, the process for determining current price estimates is more stable—and less subject to undesirable manipulation—if bids cannot be withdrawn from consideration. Hence, because of the potential under the proposed package bidding auction format for withdrawn bids, provisionally winning or not, to affect auction dynamics and the bidding strategies of other bidders, the Bureau

proposes not to allow any bids to be withdrawn after the round in which they were placed has closed.

73. The Bureau seeks comment on this proposal not to allow bids to be withdrawn or removed from consideration under its proposed HPB auction procedures. If bidders disagree with this proposal, the Bureau asks them to support their arguments by taking into account the structure of the H Block inventory, the impact on auction dynamics and the pricing mechanism, and the effects on the bidding strategies of other bidders. In the event the Bureau does not utilize HPB procedures with an SMR format, should it allow bid withdrawals? In the past, when the Bureau has allowed bid withdrawals in SMR auctions, it typically limited withdrawn bids to a maximum of three rounds, and sometimes set a lower limit on the number of withdrawal rounds. What would be the appropriate number of rounds in Auction 96 if the Bureau permits bid withdrawals?

D. Post-Auction Payments

i. Apportioning Package Bids

74. In package bidding, when a bidder places an all-or-nothing bid on a package of licenses, there will be no identifiable bid amounts on the individual licenses that compose the package. However, the Commission's competitive bidding rules and procedures assume that the amount of each bid on an individual license always is known. For example, rules for calculating the amount of small business, new entrant, or tribal land bidding credits presume that the winning bid on the license is known. Similarly, in determining the amount of a default or withdrawal payment, which involves a comparison between the withdrawing or defaulting bidder's bid and a subsequent bid, the rules assume that there are bid amounts for individual licenses. Accordingly, the Commission adopted a rule providing that, in advance of each auction with package bidding, the Commission shall establish a methodology for determining how to estimate the price or bid on an individual license included in a package of licenses.

75. The Bureau proposes that under its HPB procedures, it will use final CPEs as an estimate of the price or bid on an individual license for the purpose of later apportioning package bids. Therefore, when regulatory calculations require individual license bid amounts, the Bureau will divide the package bid amount among the licenses composing the package in proportion to the final round CPEs for the licenses. The Bureau seeks comment on this proposal.

ii. Interim Withdrawal Payment Percentage

76. The Bureau seeks comment related to its proposal to use HPB procedures on not permitting any bids, provisionally winning or otherwise, to be withdrawn or dropped from consideration in Auction 96. Under the Bureau's proposal, it would have no need to determine an appropriate interim withdrawal payment percentage.

77. The Bureau seeks comment, however, on the appropriate interim withdrawal payment percentage to apply if it allows withdrawals under procedures for an SMR auction without package bidding for Auction 96. Specifically, the Bureau seeks comment on the percentage of a withdrawn bid that should be assessed as an interim withdrawal payment in the event that a final withdrawal payment cannot be determined at the close of the auction. In general, the Commission's rules provide that a bidder that withdraws a bid during an auction is subject to a withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the winning bid in the same or subsequent auction(s). If a bid is withdrawn and no subsequent higher bid is placed and/or the license is not won in the same auction, the final withdrawal payment cannot be calculated until after the close of a subsequent auction in which a higher bid for the license (or the equivalent to the license) is placed or the license is won. When that final payment cannot yet be calculated, the bidder responsible for the withdrawn bid is assessed an interim bid withdrawal payment, which will be applied toward any final bid withdrawal payment that is ultimately assessed. 47 CFR 1.2104(g)(1) requires that the percentage of the withdrawn bid to be assessed as an interim bid withdrawal payment be between three percent and twenty percent and that it be set in advance of the auction.

78. The Commission has determined that the level of the interim withdrawal payment in a particular auction will be based on the nature of the service and the inventory of the licenses being offered. The Commission has noted that it may impose a higher interim withdrawal payment percentage to deter the anti-competitive use of withdrawals when, for example, bidders likely will not need to aggregate the licenses being offered in the auction, such as when few licenses are offered that are on adjacent frequencies or in adjacent areas, or when there are few synergies to be captured by combining licenses. However, as the Bureau has discussed in connection with its proposal to use package bidding for Auction 96, there may be significant benefits for some bidders from aggregating EA licenses. Hence, if the Bureau does not use package bidding, withdrawals may be useful to protect bidders against incomplete aggregations in Auction 96. Balancing the potential need for bidders to use withdrawals to avoid winning incomplete combinations of licenses with the Bureau's interest in deterring undesirable strategic use of withdrawals, the Bureau proposes a percentage below the maximum twenty percent permitted under the current rules but above the three percent previously provided by the Commission's rules. Specifically, the Bureau proposes to establish an interim bid withdrawal payment of fifteen percent of the withdrawn bid for this auction. The Bureau seeks comment on this proposal.

iii. Additional Default Payment Percentage

79. Any winning bidder that defaults or is disqualified after the close of an auction (i.e., fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full and timely final payment, or is otherwise disqualified) is liable for a default payment under 47 CFR 1.2104(g)(2). This payment consists of a deficiency payment, equal to the difference between the amount of the Auction 96 bidder's winning bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.

80. The percentage of the bid that a defaulting bidder must pay in addition to the deficiency will depend on the auction format ultimately chosen for a particular auction. In auctions with package bidding, as the Bureau propose to use in Auction 96, the additional payment is set, pursuant to 47 CFR 1.2104(g)(2)(ii), at twenty-five percent of the applicable bid. This higher level reflects the fact that a defaulted winning bid in an auction with package bidding may affect multiple licenses and perhaps all of the other licenses being offered.

81. In non-package auctions, the amount can range from three percent up to a maximum of twenty percent, established in advance of the auction

and based on the nature of the service and the inventory of the licenses being offered, and so, the Bureau seeks comment on an appropriate additional default payment percentage in the event it does not conduct Auction 96 with package bidding procedures. Defaults weaken the integrity of the auction process and may impede the deployment of service to the public, and an additional default payment of up to twenty percent will be more effective in deterring defaults than the three percent used in some earlier auctions. At the same time, the Bureau does not believe the detrimental effects of any defaults in Auction 96 are likely to be unusually great. Balancing these considerations, the Bureau proposes to establish an additional default payment for Auction 96 of fifteen percent of the applicable bid. The Bureau seeks comment on this proposal.

V. *Ex Parte* Rules

82. This proceeding has been designated as a permit-but-disclose proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other provisions pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in 47 CFR 1.1206(b).

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. 2013–18184 Filed 7–26–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 12–375; DA 13–1446]

Data on Service Contracts Included in Record of Inmate Calling Service Rates Proceeding

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Wireline Competition Bureau (Bureau) notifies the public that certain publicly-available inmate calling services (ICS) contracts may be considered as part of the record in this proceeding. On June 6, 2013, the Bureau submitted a letter into the record noting that certain readily-available information may be relevant to a number of issues raised in this proceeding and may be considered as part of the record. In addition, the Bureau submitted a letter into the record on June 21, 2013, noting that certain readily-available U.S. Census data may be considered in this proceeding. A public notice announcing the submittals was released on June 26, 2013. A copy of the letters is attached.

FOR FURTHER INFORMATION CONTACT: Gregory Haledjian, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1520 or *gregory.haledjian@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, WC Docket No. 12–375; DA 13–1446, released June 26, 2013. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via Internet at http://www.bcpiweb.com.

Federal Communications Commission.

Kalpak Gude,

Division Chief, Pricing Policy Division, Wireline Competition Bureau.

Federal Communications Commission
Washington, DC 20554
June 6, 2013
Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Rates for Interstate Inmate Calling Services, WC Docket No. 12–375

Dear Ms. Dortch:

The Notice of Proposed Rulemaking in this docket considers whether changes to our rules are necessary to ensure just and reasonable ICS rates for interstate, long distance calling at publicly- and privately-administered correctional facilities.[1]

With this letter, the Wireline Competition Bureau notes that the following readily-available information may be relevant to a number of issues raised in the proceeding and may be considered as part of the record in this proceeding: certain prison phone contract information referred to in the record in this proceeding[2] and available at *http://prisonphonejustice.org/Prison-Phone-Kickbacks.aspx.*[3]

Respectfully Submitted,

Jamie N. Susskind,

Acting Legal Advisor to the Bureau Chief Wireline Competition Bureau; Federal Communications Commission.

Federal Communications Commission
Washington, DC 20554
June 21, 2013
Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Rates for Interstate Inmate Calling Services, WC Docket No. 12–375

Dear Ms. Dortch:

The Notice of Proposed Rulemaking in this docket considers whether changes to our rules are necessary to ensure just and reasonable rates for inmate calling services (ICS) for interstate calling at publicly- and privately- administered correctional facilities.[1]

With this letter, the Wireline Competition Bureau notes that the following readily-available information may be relevant to a number of issues raised in the proceeding and may be considered as part of the record in this proceeding: data on the overall U.S. distribution of incarceration facility sizes that may be used as a basis for this order and obtained from the U.S. Census Bureau, Census of State and Federal Correctional Facilities, 2005;[2] U.S. Bureau of Justice Statistics, Jail Inmates at Midyear 2007;[3] U.S. Census Bureau, Census of Jail Facilities, 2006;[4] and

[1] *Rates for Interstate Inmate Calling Services,* WC Docket No. 12–375, Notice of Proposed Rulemaking, 27 FCC Rcd 16629 (2012).

[2] *See* Human Rights Defense Center Comments, WC Docket No. 12–375, at 2 and 11 (filed Mar. 25, 2013).

[3] *See* http://www.prisonphonejustice.org/Prison-Phone-Kickbacks.aspx (last visited June 6, 2013).

[1] *Rates for Interstate Inmate Calling Services,* WC Docket No. 12–375, Notice of Proposed Rulemaking, 27 FCC Rcd 16629 (2012).

[2] *See* James J. Stephan, *Census of State and Federal Correctional Facilities, 2005,* **BUREAU OF JUSTICE STATISTICS**, October 1, 2008, *available at* http://www.bjs.gov/index.cfm?ty=pbdetail&iid=530 (last visited June 20, 2013) (data summary); Study No. 24642, **NATIONAL ARCHIVE OF CRIMINAL JUSTICE DATA, AVAILABLE AT** http://dx.doi.org/10.3886/ICPSR24642.v2 (last visited June 20 2013) (actual dataset).

[3] *See* Todd D. Minton & William J. Sabol, *Jail Inmates at Midyear 2007,* **BUREAU OF JUSTICE STATISTICS**, June 6, 2008, *available at* http://www.bjs.gov/index.cfm?ty=pbdetail&iid=1005 (last visited June 20, 2013).

[4] *See* James J. Stephan & Georgette Walsh, *Census of Jail Facilities, 2006,* **BUREAU OF JUSTICE STATISTICS,** December 20, 2011, *available at* http://

Continued

Census of Jail Inmates: Individual-Level Data, 2005.[5]

Respectfully Submitted,

Jamie N. Susskind,

Acting Legal Advisor to the Bureau Chief Wireline Competition Bureau; Federal Communications Commission.

[FR Doc. 2013–18183 Filed 7–26–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 10416, Western National Bank, Phoenix, AZ

Notice is hereby given that the Federal Deposit Insurance Corporation (''FDIC'') as Receiver for Western National Bank, Phoenix, AZ (''the Receiver'') intends to terminate its receivership for said institution. The FDIC was appointed receiver of Western National Bank on December 16, 2011. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 32.1, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: July 23, 2013.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2013–18061 Filed 7–26–13; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), pursuant to 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before September 27, 2013.

ADDRESSES: You may submit comments, identified by FR H-(b)11 by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include OMB number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9:00 a.m. and 5:00 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503 or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer —Cynthia Ayouch— Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Request for Comment on Information Collection Proposal

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

www.bjs.gov/index.cfm?ty=pbdetail&iid=2205 (last visited June 20, 2013) (data summary); Census of Jail Facilities, 2006, Study No. 26602, **NATIONAL ARCHIVE OF CRIMINAL JUSTICE DATA, AVAILABLE AT** *http://dx.doi.org/10.3886/ICPSR26602.v1* (last visited June 20, 2013) (actual dataset).

[5] *See* Census of Jail Inmates: Individual-Level Data, 2005, Study No. 20367, **NATIONAL ARCHIVE OF CRIMINAL JUSTICE DATA, AVAILABLE AT** http://dx.doi.org/10.3886/ICPSR20367.v1 (last visited June 20, 2013) (actual dataset).

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection 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.

Proposal to Approve Under OMB Delegated Authority the Extension for Three Years, With Revision, of the Following Report

Report title: Savings Association Holding Company Report.

Agency form number: FR H–(b)11.

OMB control number: 7100–0334.

Frequency: Quarterly, event-driven, and annually.

Reporters: Savings and loan holding companies (SLHCs).

Estimated annual reporting hours: 264.

Estimated average hours per response: 2.0 hours.

Number of respondents: 33.

General description of report: This information collection is mandatory (12 U.S.C. 1467a(b)(2)(A)). The FR H-(b)11 covers 6 different items. However, the Federal Reserve has determined that supplemental information in response to a yes answer for the Quarterly Savings and Loan Holding Company Report (FR 2320; OMB No. 7100–0345) FR 2320's questions 24, 25, and 26 may be protected from disclosure under exemption 4 of the Freedom of Information Act (FOIA), which covers ''trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential'' (5 U.S.C. 522(b)(4)). Disclosure of this type of information is likely to cause substantial competitive harm to the SLHC providing the information and thus this information is protected from disclosure under FOIA exemption 4 (5 U.S.C. 522(b)(4)).

With regard to the supplemental information for other FR 2320 questions that would be provided in item 3 of the FR H–(b)11, as well as all other items of the FR H–(b)11, respondents may request confidential treatment of such information under one or more of the exemptions in the FOIA. All such requests for confidential treatment will be reviewed on a case-by-case basis and in response to a specific request for disclosure.

Abstract: Currently all SLHCs must file the FR H-(b)11. However, the majority of SLHCs file other Federal Reserve regulatory reports such as the Financial Statements for Holding Companies (FR Y–9C; OMB No. 7100–0128) or the Parent Only Financial Statements for Small Holding Companies (FR Y–9SP; OMB No. 7100–0128); therefore, the FR H-(b)11 is no longer needed from these SLHCs for supervision purposes. The Federal Reserve proposes to revise the current FR H-(b)11 respondent panel to include only exempt SLHCs.[1] The FR H-(b)11 report provides consolidated financial statements that show detailed information by business unit. These consolidated statements provide information about the individual entities and the eliminating entries that tie into the consolidated statements. These types of financial statements are particularly useful for larger complex companies with multiple entities. A number of the large insurance savings and loan holding companies (ISLHCs) are private and do not file with the Securities and Exchange Commission, therefore, the level of detail that would be provided in those filings is not available (also information on company Web sites provide very limited insight). Additionally, the ''Other Materially Important Events'' section of the FR H-(b)11 informs the Federal Reserve of material litigation or other contingent liabilities, key management changes, unexpected economic events, and other information that may be of material importance. This information is particularly useful in assisting with off-site reviews.

In contrast, the Federal Reserve believes that the FR 2320 data provides limited detail on its own for Federal Reserve off-site surveillance and pre-examination planning and its use would be augmented by the continued collection of the FR H-(b)11. Most ISLHCs only provide parent company data. These ISLHCs are generally quite large and privately held; therefore, the data collected on the FR 2320 is limited in scope and is not conducive to consolidated supervision. Additionally, as part of the Annual Report of Holding Companies (FR Y–6; OMB No. 7100–0297), the Federal Reserve requires that top-tier holding companies with total consolidated assets of $500 million or more must have an annual audit of its consolidated financial statements by an independent public accountant. However, the FR Y–6 does not require detailed quarterly financial statements which give a more timely representation of the financial condition of a company.

In addition, the Federal Reserve proposes to remove the docket number from the FR H–(b)11 reporting form and all references to the docket number in the instructions. The docket number is no longer used as the SLHC identifier. The RSSD number is now the universal identifier used by all the regulatory agencies.

Finally, the continued reporting of the FR H–(b)11 report by exempt SLHCs would assist the Federal Reserve in the evaluation of a diversified holding company and in determining whether an institution is in compliance with applicable laws and regulations.

Board of Governors of the Federal Reserve System, July 24, 2013.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2013–18128 Filed 7–26–13; 8:45 am]

BILLING CODE 6210–01–P

[1] An exempted SLHC includes (1) a grandfathered unitary SLHC whose assets are primarily commercial and whose thrifts make up less than 5 percent of its consolidated assets; and (2) a SLHC whose assets are primarily insurance-related and who does not otherwise submit financial reports with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934. (76 FR 81933).

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 13, 2013.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30309:

1. *P. Bruce Culpepper, Tallahassee, Florida; Richard R. Dostie, Jacksonville, Florida; Charles E. Hughes, Jr., Jacksonville, Florida; J. Malcolm Jones, Jr., Jacksonville, Florida; James T. Katsur, Longwood, Florida; W. Andrew Krusen, Jr., Tampa, Florida; Allan S. Martin, Tampa, Florida; Linda C. McGurn, Micanopy, Florida; M. G. Sanchez, Gainesville, Florida; DFGM 2010, LLC, Tampa, Florida; Dominion*

Capital Group, LLC, Tampa, Florida; Dominion Strategic Resource Partners, Tampa, Florida; Jessie T. Krusen IRA, Tampa, Florida; William Andrew Krusen, Jr. SEP IRA, Tampa, Florida; Krusen Limited Partnership, Ltd., Tampa, Florida; Tejas Partners, Ltd., Tampa, Florida; Trust UWO Isabelle Ball Baker FBO Jessie T. Thompson Krusen, Tampa, Florida; WIT Financial Group, LLC, Tampa, Florida; and WIT Ventures, Ltd., Tampa, Florida; to acquire voting shares of Florida Capital Group, Inc., and thereby indirectly acquire voting shares of Florida Capital Bank, National Association, both in Jacksonville, Florida.

Board of Governors of the Federal Reserve System, July 24, 2013.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2013–18094 Filed 7–26–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 23, 2013.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *C&F Financial Corporation,* West Point, Virginia; to acquire 100 percent of the voting shares of Central Virginia Bankshares, Inc., and thereby indirectly acquire voting shares of Central Virginia Bank, both in Powhatan, Virginia.

B. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *United Community Bancorp, Inc.,* Chatham, Illinois; to acquire 100 percent of the voting shares of Mercantile Bank, Quincy, Illinois.

Board of Governors of the Federal Reserve System, July 24, 2013.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2013–18096 Filed 7–26–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 13, 2013.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. 2009 TCRT; GJF Financial Management II, LLC; Ford Ultimate Management II, LLC; Ford Management II, L.P., and Ford Fund Investment, L.P., all in Dallas, Texas; to engage *de novo* in financial and investment advisory activities, pursuant to section 225.28(b)(6).

Board of Governors of the Federal Reserve System, July 24, 2013.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2013–18095 Filed 7–26–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 121 0165]

Solera Holdings, Inc.; Analysis of Proposed Agreement Containing Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before August 22, 2013.

ADDRESSES: Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/soleraholdingsconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ASolera Holdings, File No. 121 0165'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/soleraholdingsconsent* 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 D), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Scott Reiter (202–326–2886), FTC, Bureau of Competition, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned

consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for July 22, 2013), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before August 22, 2013. Write ASolera Holdings, File No. 121 0165'' on your comment. Your comment B including your name and your state B will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

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

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] 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/soleraholdingsconsent* by following the instructions 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 ASolera Holdings, File No. 121 0165'' 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 D), 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 Notice 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 August 22, 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.*

Analysis of Agreement Containing Consent Order to Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Order (''Consent Agreement'') with Solera Holdings, Inc. (''Solera''), which is designed to remedy the anticompetitive effects of its consummated acquisition of Actual Systems of America, Inc. (''Actual Systems''). Under the terms of the Consent Agreement, Solera is required to divest assets related to Actual Systems' United States and Canadian yard management system (''YMS'') business to ASA Holdings, Inc. (''ASA Holdings'').

The proposed Consent Agreement requires Solera to provide ASA Holdings with assets related to Actual Systems' United States and Canadian YMS business. The assets include contracts and licenses with current Actual Systems customers in the United States and Canada, and co-ownership of all intellectual property related to Actual Systems products sold in the United States and Canada. This Consent Agreement would preserve the competition that was eliminated through the acquisition.

The proposed Consent Agreement has been placed on the public record for thirty days, and comments from interested persons have been requested. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement, modify it, or make final the accompanying Decision and Order.

Pursuant to a Stock Purchase Agreement dated May 29, 2012, Solera acquired all of the stock of Actual Systems. Through a separate Stock Purchase Agreement and Asset Purchase Agreement executed that same day, Solera acquired 100% of the stock of Actual Systems U.K., Ltd. (''ASUK'') and Beech Systems, Ltd. (''Beech''). Solera paid approximately $8.7 million collectively for the three companies, which shared common ownership.

Solera, through its wholly-owned subsidiary Hollander, Inc. (''Hollander''), and Actual Systems both provide YMS to the automotive recycling industry. In particular, at the time of the acquisition, Hollander and Actual Systems were two of only three meaningful providers of YMS in the United States and Canada. The Commission's Complaint alleges that the consummated acquisition violated Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the market for YMS. The proposed Consent Agreement remedies the alleged violations by replacing the lost competition in the relevant market that resulted from the acquisition.

II. The Product and Structure of the Market

The relevant product market in which to analyze the competitive effects of the acquisition is YMS. The relevant

[1] 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).

geographic market in which to analyze the competitive effects of the acquisition is the United States and Canada. Hollander and Actual Systems are closest competitors in this market and are two of only three competitively meaningful YMS providers.

III. Effects of the Acquisition

The acquisition is likely to result in significant anticompetitive harm in the highly-concentrated YMS market. Solera and Actual Systems were two of only three significant competitors in this market. The acquisition has eliminated actual, direct, and substantial competition between Solera and Actual Systems, and likely will result in higher prices and reduced innovation for YMS.

IV. Entry

Entry or repositioning is not likely to avert the anticompetitive impact of Solera's acquisition of Actual Systems. The time and cost required to develop a YMS are substantial, and far outweigh the potential profit incentives for either new entrants or firms operating in adjacent markets. In addition, it would be difficult for a new entrant to obtain a license to the Hollander Interchange, an auto parts database required to compete in the YMS market.

V. The Proposed Consent Agreement

The proposed Consent Agreement remedies the competitive concerns raised by the transaction by requiring Solera to divest assets related to Actual Systems' United States and Canadian business to ASA Holdings. This divestiture preserves competition that was eliminated as a result of the acquisition.

ASA Holdings is comprised of individuals with extensive experience with Actual Systems and the YMS market. The main principal of ASA Holdings is Peter Riddle. Mr. Riddle founded ASUK in 1985, developed the base YMS software program that would become Actual Systems' YMS, and formed Actual Systems in the United States. The other members of ASA Holdings are Emilio Fontana and Peter Bishop. Mr. Fontana was involved with Actual Systems since the mid-1990s, including serving as a member of its Board of Directors. Mr. Bishop worked for Actual Systems for over 10 years, including serving as its General Manager and Director from 2004 until its acquisition by Solera. The terms required by the proposed Consent Agreement will enable ASA Holdings to effectively replace the competition in the YMS market lost as a result of the acquisition.

The proposed Consent Agreement also contains several provisions designed to ensure that the divestiture is successful. For instance, Solera must provide ASA Holdings with a license to the Hollander Interchange lasting the length of the proposed Consent Agreement.

If the Commission determines that ASA Holdings is not an acceptable acquirer of the assets to be divested, or that the manner of the divestiture is not acceptable, Solera must rescind the divestiture and divest the assets within 120 days of the date the Order becomes final to another Commission-approved acquirer. If Solera fails to divest the assets within the 120 days, the Commission may appoint a trustee to divest the relevant assets.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Consent Agreement or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2013–18070 Filed 7–26–13; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0865]

The Patient Preference Initiative: Incorporating Patient Preference Information Into the Medical Device Regulatory Processes: Public Workshop; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

The Food and Drug Administration (FDA) is announcing the following public workshop entitled ''The Patient Preference Initiative: Incorporating Patient Preference Information into the Medical Device Regulatory Processes.'' The purpose of the workshop is to discuss ways to incorporate patient preferences on the benefit-risk tradeoffs of medical devices into the full spectrum of the Center for Devices and Radiological Health (CDRH) regulatory decision making. It also aims to advance the science of measuring treatment preferences of patients, caregivers, and health care providers. The information learned from this workshop and public comments will benefit regulators, industry, providers, patients, and device innovators.

Date and Time: The public workshop will be held on September 18 and 19, 2013, from 8 a.m. to 5 p.m.

Location: The public workshop will be held at FDA's White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, Section A of the Great Room (rm. 1503), Silver Spring, MD 20993–0002. Entrance for public workshop participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to: *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm*

Contact Person: Nada Hanafi, Center for Devices and Radiological Health, Food and Drug Administration, Bldg. 66, rm. 3623, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–5427, email: *Nada.Hanafi@fda.hhs.gov.*

Registration: Registration is free and available on a first-come, first-served basis. Persons interested in attending this public workshop must register online by September 11, 2013, 4 p.m. Early registration is recommended because facilities are limited and, therefore, FDA may limit the number of participants from each organization. If time and space permit, onsite registration on the day of the workshop will be available beginning at 7 a.m.

If you need special accommodations due to a disability, please contact Susan Monahan (email: *susan.monahan@fda.hhs.gov* or 301–796–5661) no later than September 4, 2013.

To register for the public workshop, please visit FDA's Medical Devices News & Events—Workshops & Conferences calendar at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.* (Select this meeting/public workshop from the posted events list.) Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone number. Those without Internet access should contact Susan Monahan (*susan.monahan@fda.hhs.gov,* 301–796–5661) to register. Registrants will receive confirmation after they have been accepted. You will be notified if you are on a waiting list.

Streaming Webcast of the Public Workshop: This public workshop will also be Webcast. Persons interested in viewing the Webcast must register online by September 11, 2013, 4 p.m.

Early registration is recommended because Webcast connections are limited. Organizations are requested to register all participants, but to view using one connection per location. Webcast participants will be sent technical system requirements after registration and will be sent connection access information after September 12, 2013. If you have never attended a Connect Pro event before, test your connection at *https://collaboration.fda.gov/common/help/en/support/meeting_test.htm.* To get a quick overview of the Connect Pro program, visit *http://www.adobe.com/go/connectpro_overview.* (FDA has verified the Web site addresses in this document, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

Comments: FDA is holding this public workshop to obtain information on incorporating patient preferences into medical device regulatory processes. In order to permit the widest possible opportunity to obtain public comment, FDA is soliciting either electronic or written comments on all aspects of measuring patient preference. FDA invites stakeholders to submit their ideas before, during, or after the workshop. The deadline for submitting comments related to this public workshop is October 18, 2013. FDA is also soliciting comments and information for inclusion in the workshop materials. To ensure adequate time for review and incorporation prior to the workshop, FDA encourages stakeholders to submit preliminary information by August 19, 2013.

This public workshop also includes an oral public comment session. FDA intends to allow a 45-minute session for interested stakeholders to raise questions and topics for consideration by the Agency.

Regardless of attendance at the public workshop, interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. In addition, when responding to specific questions as outlined in section II of this document, please identify the question you are addressing. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Transcripts: Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov.* It may be viewed at the Division of Dockets Management (see *Comments*). A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to the Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857. A link to the transcripts will also be available approximately 45 days after the public workshop on the Internet at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.* (Select this public workshop from the posted events list).

SUPPLEMENTARY INFORMATION:

I. Background

CDRH is committed to giving patients in the United States access to high-quality, safe, and effective medical devices of public health importance first in the world. A key step toward this goal is to improve the predictability, consistency, and transparency of the premarket review process. In 2012, CDRH published the guidance document entitled ''Factors to Consider When Making Benefit-Risk Determinations in Medical Device Premarket Approval and De Novo Classifications'' (77 FR 18828; March 28, 2012). This guidance document outlines the principal factors FDA considers when making benefit-risk determinations during the premarket review process for certain medical devices, including data on patient perspectives on meaningful benefits and acceptable risks.

While the benefit-risk guidance outlines a strategy for including patient preference data in the premarket review process, it does not outline which methods, tools, and approaches could be used to collect this information or provide guidance on how to establish and evaluate the validity of evidence necessary for regulatory consideration. Moreover, it is necessary to determine how patient preference data may be used in a broader context of the total product life cycle (TPLC) of medical devices. In addition to the benefit-risk determination, patient preference measurements may also play an important role in device innovation and postmarket analysis. For example, patient dissatisfaction with the side effects of a currently marketed device may suggest the need for postmarket studies, regulatory actions, or may identify an opportunity to develop novel device design features.

CDRH has established the Patient Preference Initiative to provide the information, guidance, and framework necessary to incorporate patient preferences on the benefit-risk tradeoffs of medical devices into the full spectrum of CDRH regulatory processes and to inform medical device innovation by the larger medical device community. In the process, the initiative aims to advance the science of measuring medical device preferences of patients, caregivers, and providers. Once the Patient Preference Initiative helps to define or refine the methods to measure patient preference, CDRH seeks to incorporate patient views into the TPLC of medical devices.

Patients have unique perspectives about the value of the probable benefits and the impact of potential risks of medical devices. Scientists, clinicians, device developers, and regulators play critical roles in understanding the operation of medical devices and the associated benefits and risks. But only patients live with their medical conditions and need to make the choices required for their care. In order to properly take these views into account, investigators must have reliable and accurate methods, tools, and approaches.

Definition of Patient Preference: A composite measurement of patient perceptions or expectations of potential benefits and risks of a purported medical device, measured across the full spectrum of patients who may be exposed to the device. The spectrum should include the full variety of disease presentation, the exposure to the devices, and the demographics of the target or affected patient populations.

II. Topics for Discussion at the Public Workshop

FDA is holding this public workshop to discuss incorporating patient preference information into pre- and postmarket regulatory processes. FDA intends to engage and solicit information from stakeholders on (1) approaches (methods, tools and validation) for capturing, collecting, and validating patient preference information; and (2) the incorporation of patient preference information into regulatory review processes.

In addressing these issues, FDA encourages stakeholders to consider and comment on these questions:

1. How to identify patients and their preferences

- What type of information can/should patients provide?
- What types of information do patients use to formulate decisions about their treatment options?
- Where can patient preference information be found?

2. What approaches should be used to collect patient preference information?

- What methods and tools can be used?
- What are the relative strengths and limitations of these methods and tools?
- Who should collect patient preference information?

3. How to validate patient preference data and information

- What methods and tools can be used?
- Who should validate patient preference information?

4. How to incorporate patient preference information in the regulatory process

- How can FDA use patient preference data within the Total Product Life Cycle regulatory paradigm?
- In what ways should it not be used?
- What additional safeguards should FDA consider when including patient preference information into its regulatory decision making?

Dated: July 23, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–18080 Filed 7–26–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects (Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995), the Health Resources and Services Administration (HRSA) announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate below, or any other aspect of the ICR.

DATES: Comments on this Information Collection Request must be received within 60 days of this notice.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 10–29, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: Advanced Education Nursing Traineeship (AENT) Program application.

OMB No. 0915–XXXX—New.

Abstract: The Health Resources and Services Administration (HRSA) provides advanced education nursing training grants to educational institutions to increase the numbers of advanced education nurses through the AENT Program. The AENT Program is governed by Title VIII, Section 811(a)(2) of the Public Health Service Act, (42 U.S.C. 296j(a)(2)), as amended by Section 5308 of the Patient Protection and Affordable Care Act of 2010, Public Law 111–148. This new request includes the Project Abstract, Program Narrative, Attachments and Tables. The proposed AENT Tables will include information on program participants such as the projected number of enrollees/trainees receiving traineeship support; projected number of graduates receiving traineeship support for the previous fiscal year; the types of programs they are enrolling into and/or from which enrollees/trainees are graduating; and the distribution of primary care nurse practitioners and nurse midwives who plan to practice in rural, underserved, or public health practice settings.

Need and Proposed Use of the Information: The Project Abstract is often distributed to provide information to the public and Congress. HRSA will use this information in determining the amount of traineeship support to be awarded per student per institution and to succinctly capture data for the number of projected students for determining eligibility for Special Consideration and Statutory Funding Preference.

Likely Respondents: Eligible applicants are schools of nursing, nursing centers, academic health centers, state or local governments, and other public or private nonprofit entities determined appropriate by the Secretary that submit an application and are accredited for the provision of primary care nurse practitioner and nurse midwifery programs accredited by a national nurse education accrediting agency recognized by the Secretary of the U.S. Department of Education. The school must be located in the 50 states, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, Guam, the U.S. Virgin Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau.

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 Information Collection Request are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS:

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total Burden hours
AENT Application including the AENT Tables and Attachments	236	1	236	7	1,652
Total	236	1	236	7	1,652

HRSA 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.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2013–18162 Filed 7–26–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council on Alcohol Abuse and Alcoholism.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Alcohol Abuse and Alcoholism.

Date: September 18–19, 2013.

Closed: September 18, 2013.

Time: 5:30 p.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, T508, Rockville, MD 20852.

Open: September 19, 2013, 8:45 a.m. to 2:00 p.m.

Agenda: Presentations and other business of the council.

Place: National Institutes of Health, 5635 Fishers Lane, T508, Rockville, MD 20852.

Contact Person: Abraham P. Bautista, Ph.D., Executive Secretary, National Institute on Alcohol Abuse & Alcoholism, National Institutes of Health, 5635 Fishers Lane, Rm 2085, Rockville, MD 20852, 301–443–9737, *bautista@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://www.niaaa.nih.gov/AboutNIAAA/AdvisoryCouncil/Pages/default.aspx* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.273, Alcohol Research Programs, National Institutes of Health, HHS)

Dated: July 22, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–18054 Filed 7–26–13; 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 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 AIDS Research Advisory Committee, NIAID.

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: AIDS Research Advisory Committee, NIAID; AIDS Vaccine Research Subcommittee.

Date: September 18, 2013.

Time: 8:30 a.m. to 12:30 p.m.

Agenda: Presentations by the Vaccine Research Program staff on the preclinical, translational and clinical AIDS vaccine research programs supported by the Division of AIDS for the purpose of obtaining advice and guidance from the AVRS on future vaccine efforts.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1/E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: James A. Bradac, Ph.D., Chief, Preclinical Research and Development Branch, Division of AIDS, Room 5134, National Institutes of Health/NIAID, 6700B Rockledge Drive, Bethesda, MD 20892–7628, 301–435–3754, *jbradac@mail.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: July 22, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–18055 Filed 7–26–13; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; OppNet RFA: Culture, Health and Wellbeing.

Date: August 1, 2013.

Time: 4:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Karin F Helmers, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3144, MSC 7770, Bethesda, MD 20892, (301) 254–9975, *helmersk@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(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: July 23, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–18053 Filed 7–26–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Request for Information: The National Institute of Environmental Health Sciences/National Toxicology Program Requests the Nomination and Prioritization of Environmentally Responsive Genes for Use in Screening Large Numbers of Substances Using Toxicogenomic Technologies

SUMMARY: The National Institute of Environmental Health Sciences (NIEHS)/National Toxicology Program (NTP) is interested in the identification and prioritization of a comprehensive list of environmentally responsive genes that might be targets for screening cells or tissues obtained from humans, rats, mice, zebrafish, and *Caenorhabditis elegans* against large numbers of substances. The goal is to generate a minimum list of 1000 genes for each species that would provide the maximal toxicogenomic information on (1) effects that reflect general cellular responses, independent of cell type or species, and (2) gene expression changes that are specific by organ and/or cell type. The NIEHS/NTP also seeks recommendations on criteria to use for prioritizing the genes in order to identify those potentially most useful in a screening paradigm. Such a list of environmentally responsive genes may be useful also in biomarker development and basic research efforts.

DATES: The deadline for receipt of information is August 23, 2013.

ADDRESSES: Nominated genes and/or recommendations on prioritization criteria should be submitted electronically in Microsoft Excel or Word formats to *Genelist@niehs.nih.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Elizabeth Maull, NIEHS, P. O. Box 12233 (MD K2–17), Research Triangle Park, NC 27709; email: *maull@niehs.nih.gov*.

SUPPLEMENTARY INFORMATION:

Background:

In 2008, the NIEHS/NTP, the U.S. Environmental Protection Agency's (EPA) National Center for Computational Toxicology (NCCT), and the National Human Genome Research Institute (NHGRI)/NIH Chemical Genomics Center (NCGC) (now located within the National Center for Advancing Translational Sciences (NCATS)) entered into a formal agreement to develop a vision and devise an implementation strategy to shift the assessment of chemical hazards from traditional, experimental animal, toxicology studies to target-specific, mechanism-based, biological observations largely obtained using *in vitro* assays. In mid-2010, the U.S. Food and Drug Administration (FDA) joined the collaboration that is known informally as Tox21.

In Tox21, the agencies collaborate to research, develop, validate, and translate innovative testing methods for characterization of toxicity pathways; identify compounds, assays, informatic analyses, and targeted testing needed to support the development of new methods; identify patterns of compound-induced biological response(s) in order to characterize toxicity pathways; facilitate cross-species and low-dose extrapolation; prioritize compounds for more extensive toxicological evaluation; and develop predictive models for biological response in humans. Currently, the primary Tox21 activity is the screening of a 10,000 compound library in a number of nuclear receptor agonist/antagonist and stress response pathway assays primarily using reporter gene platforms. In the next phase, the focus will be on assaying large numbers of chemicals in high content screens and mid to high throughput, targeted gene expression platforms.

To conduct the next phase, the NIEHS/NTP in collaboration with its Tox21 partners seeks to identify a prioritized set of at least 1000 genes that would provide comprehensive toxicogenomic information on (1) gene induction or repression reflecting general cellular responses that are largely independent of cell type or species, and (2) gene expression changes that are organ and/or cell type specific. Examples of processes likely to be cell-type independent include genes involved in stress-response pathways (e.g., DNA repair, hypoxia, heat shock), chromatin remodeling, and those that regulate cell division and death. Examples of processes more likely to be cell-type specific include induction or repression of expression of enzymes that modify or activate chemical toxicants, regulation of the hypothalamic-pituitary-adrenal axis, and inflammatory responses. In keeping with the Tox21 goal of facilitating cross-species extrapolation, the NIEHS/NTP is especially interested in the nomination of genes or gene sets specifically relevant for comparisons between humans, rats, mice, zebrafish, and *C. elegans* and especially those for which complementary functional pathways exist. Such a list of environmentally responsive genes may be useful also in biomarker development and basic research efforts. To facilitate identification of the most useful genes to include in a screening paradigm, the NIEHS/NTP also requests recommendations on criteria to use for their prioritization.

Request for Information

The NIEHS/NTP seeks to establish a prioritized list of environmentally responsive genes to screen cells/tissues from humans, rats, mice, zebrafish, and *C. elegans* for agent-induced alterations using mid to high throughput, targeted transcriptomics platforms. The goal is to screen a large number of compounds and obtain information useful for understanding the potential for adverse health outcomes. To that end, the NIEHS/NTP requests that respondents provide information for either or both of the following:

- Nominations of specific genes or gene sets. Nominated genes should be identified using Entrez and/or Ensembl gene IDs. Desirable supporting information for the nominated gene(s) would include the associated pathway(s) or biological process(s), the cellular context(s) where demonstrated, and the technology used to measure expression of the nominated gene. If available, please include relevant citations as a part of the supporting information.
- Criteria for prioritization of the genes or gene sets. The NIEHS/NTP is interested in criteria that could be used to develop a prioritized list of genes that would provide the greatest level of

insight and discrimination of toxicological response in a variety of applications including cross-species comparisons and differential tissue responses.

The nominated genes and/or criteria recommendations should be submitted electronically in Microsoft Excel or Word format.

Respondents to this request for information are asked also to provide their name, affiliation, address, and contact information (including telephone and fax numbers, and email address). The deadline for receipt of the requested information is August 23, 2013.

Responses to this request are voluntary. This notice does not obligate the U.S. Government to award a contract or otherwise pay for the information provided in response to this request. The U.S. Government reserves the right to use information provided by respondents for any purpose deemed necessary and legally appropriate. Any organization responding to this request should ensure that its response is complete and sufficiently detailed. Respondents are advised that the U.S. Government is under no obligation to acknowledge receipt of the information received or provide feedback to respondents with respect to any information submitted. No proprietary, classified, confidential, or sensitive information should be included in your response.

Background Information on the NTP

The NTP is an interagency program established in 1978 (43 FR 53060) to strengthen the Department's activities in toxicology research and testing, and develop and validate new and better testing methods. Other activities of the program focus on strengthening the science base in toxicology and providing information about potentially toxic chemicals to health regulatory and research agencies, scientific and medical communities, and the public. The NTP is located administratively at the NIEHS. Information about the NTP and NIEHS is found at *http://www.niehs.nih.gov* and *http://ntp.niehs.nih.gov,* respectively.

Dated: July 23, 2013.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. 2013–18058 Filed 7–26–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Mental Health Services; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given that the Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Mental Health Services (CMHS) National Advisory Council will meet August 14, 2013, 9:00 a.m. to 5:00 p.m.

The meeting will include discussion and evaluation of grant applications reviewed by Initial Review Groups. Therefore, the meeting will be closed to the public from 9:00 a.m.–10:30 a.m. as determined by the SAMHSA Administrator, in accordance with Title 5 U.S.C. 552b(c)(9)(b) and 5 U.S.C. App. 2, Section 10(d). The remainder of the meeting is open and will include discussion of the Center's policy issues, and current administrative, legislative, and program developments.

Substantive program information, a summary of the meeting and a roster of Council members may be obtained as soon as possible after the meeting, by accessing the SAMHSA Committee Web site at *https://nac.samhsa.gov/CMHScouncil/index.aspx,* or by contacting the CMHS National Advisory Council Designated Federal Official, Ms. Deborah DeMasse-Snell (see contact information below).

Committee Name: SAMHSA's Center for Mental Health Services National Advisory Council.

Date/Time/Type: August 14, 2013, 9:00 a.m.–10:30 a.m. Closed. August 14, 2013, 10:30 a.m.–5:00 p.m. Open.

Place: SAMHSA Building, 1 Choke Cherry Road, Great Falls Room, Rockville, Maryland 20857.

Contact: Deborah DeMasse-Snell M.A. (Than), Designated Federal Official, SAMHSA CMHS National Advisory Council, 1 Choke Cherry Road, Room 6–1084, Rockville, Maryland 20857, Telephone: (240) 276–1861, Fax: (240) 276–1830, Email: *Deborah.DeMasse-Snell@samhsa.hhs.gov.*

Cathy J. Friedman,

Public Health Analyst, SAMHSA.

[FR Doc. 2013–18113 Filed 7–26–13; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

National Advisory Councils; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the combined meeting on August 15, 2013, of the Substance Abuse and Mental Health Services Administration's (SAMHSA) four National Advisory Councils (the SAMHSA National Advisory Council (NAC), the Center for Mental Health Services NAC, the Center for Substance Abuse Prevention NAC, the Center for Substance Abuse Treatment NAC), and the two SAMHSA Advisory Committees (Advisory Committee for Women's Services, and the Tribal Technical Advisory Committee).

The Councils were established to advise the Secretary, Department of Health and Human Services (HHS), the Administrator, SAMHSA, and Center Directors, concerning matters relating to the activities carried out by and through the Centers and the policies respecting such activities.

Under Section 501 of the Public Health Service Act, the Advisory Committee for Women's Services (ACWS) is statutorily mandated to advise the SAMHSA Administrator and the Associate Administrator for Women's Services on appropriate activities to be undertaken by SAMHSA and its Centers with respect to women's substance abuse and mental health services.

Pursuant to Presidential Executive Order No. 13175, November 6, 2000, and the Presidential Memorandum of September 23, 2004, SAMHSA established the Tribal Technical Advisory Committee (TTAC) for working with Federally-recognized Tribes to enhance the government-to-government relationship, honor Federal trust responsibilities and obligations to Tribes and American Indian and Alaska Natives. The SAMHSA TTAC serves as an advisory body to SAMHSA.

The August 15 combined meeting will include discussions regarding the future of SAMHSA, National Behavioral Health Quality Framework and Barometer, Prevention in Healthcare, SAMSHA's Role as a Clinical Leader, and Advisory Members' Views from the Field regarding the National Dialogue.

The meeting is open to the public and will be held at the SAMHSA building, 1 Choke Cherry Road, Rockville, MD 20857 in the 1st floor Conference Rooms. Attendance by the public will

be limited to space available. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions should be forwarded to the contact person on or before one week prior to the meeting. Oral presentations from the public will be scheduled at the conclusion of the meeting. Individuals interested in making oral presentations are encouraged to notify the contact on or before one week prior to the meeting. Five minutes will be allotted for each presentation.

The meeting may be accessed via teleconference at 888–677–8206, Participant passcode: 4517550. To attend on site, obtain the call-in number and access code, submit written or brief oral comments, or request special accommodations for persons with disabilities, please register on-line at *http://nac.samhsa.gov/Registration/meetingsRegistration.aspx,* or communicate with SAMHSA's Committee Management Officer, Ms. Cynthia Graham (see contact information below).

Substantive meeting information and a roster of Committee members may be obtained either by accessing the SAMHSA Committees' Web site at *https://nac.samhsa.gov/WomenServices/index.aspx,* or by contacting Ms. Graham. The transcript for the meeting will be available on the SAMHSA Committees' Web site within three weeks after the meeting.

Committee Names:

Substance Abuse and Mental Health Services Administration National Advisory Council
Center for Mental Health Services National Advisory Council
Center for Substance Abuse Prevention National Advisory Council
Center for Substance Abuse Treatment National Advisory Council
SAMHSA's Advisory Committee for Women's Services
SAMHSA Tribal Technical Advisory Committee

Date/Time/Type: Thursday, August 15, 2013 from 9 a.m. to 6:00 p.m. EDT: Open.

Place: SAMHSA, 1 Choke Cherry Road, SAMHSA 1st floor Conference Rooms, Rockville, Maryland 20857.

Contact: Cynthia Graham, M.S., Acting Designated Federal Official, 1 Choke Cherry Road, Room 5–1035, Rockville, Maryland 20857, Telephone: (240) 276–1692, Fax: (240) 276–1690, Email: *cynthia.graham@samhsa.hhs.gov.*

Cathy J. Friedman,

Public Health Analyst, SAMHSA.

[FR Doc. 2013–18101 Filed 7–26–13; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Treatment (CSAT) National Advisory Council; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given that the Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Treatment (CSAT) National Advisory Council will meet August 14, 2013, 9:00 a.m.—4:30 p.m.

The meeting will include the review, discussion and evaluation of grant applications reviewed by the Initial Review Group. Therefore, this section of the meeting will be closed to the public as determined by the SAMHSA Administrator, in accordance with Title 5 U.S.C. 552b(c)(9)(B) and 5 U.S.C. App. 2, Section 10(d).

The remainder of the meeting is open to the public and will include a discussion of the Center's current administrative, legislative, and program developments. Public comments are welcome. To attend on-site, or request special accommodations for persons with disabilities, please register at SAMHSA Committees' Web site, *http://nac.samhsa.gov/Registration/meetingsRegistration.aspx* or contact the Council's Designated Federal Officer, Ms. Cynthia Graham, (see contact information below).

Individuals interested in making oral comments or obtaining the meeting number and passcode are encouraged to notify Ms.Graham, on or before August 5, 2013. Substantive program information, a summary of the meeting and a roster of Council members may be obtained 30 days following the meeting by accessing the SAMHSA Committee Web site at *http://nac.samhsa.gov/CSATcouncil/index.aspx* or contacting Ms. Graham.

Committee Name: Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Treatment National Advisory Council.

Date/Time/Type: August 14, 2013, 9:00 a.m.–9:15 a.m. (Closed), 9:20 a.m.–4:30 p.m. (Open).

Place: SAMHSA Building, 1 Choke Cherry, Rockville, MD 20857.

Contact: Cynthia Graham, M.S., Designated Federal Official, SAMHSA/CSAT National Advisory Council, 1 Choke Cherry Road, Room 5–1035, Rockville, MD 20857, Telephone: (240) 276–1692, FAX: (240) 276–1690, Email: *cynthia.graham@samhsa.hhs.gov.*

Cathy J. Friedman,

Public Health Analyst, SAMHSA.

[FR Doc. 2013–18104 Filed 7–26–13; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Advisory Committee for Women's Services; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Substance Abuse and Mental Health Services Administration's (SAMHSA) Advisory Committee for Women's Services (ACWS) on August 14, 2013.

The meeting is open to the public. It will include an update from the SAMHSA Women's Coordinating Committee and discussions of SAMHSA Block Grants and Health Reform with a Focus on Women's Services, NASADAD Women's Services Network (WSN), The Women's Recovery Group Study and The Future of SAMHSA.

The meeting is open to the public and will be held at the SAMHSA building, 1 Choke Cherry Road, Rockville, MD 20857 in the VTC Room. Attendance by the public will be limited to space available. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions should be forwarded to the contact person on or before one week prior to the meeting. Oral presentations from the public will be scheduled at the conclusion of the meeting. Individuals interested in making oral presentations are encouraged to notify the contact on or before one week prior to the meeting. Five minutes will be allotted for each presentation.

The meeting may be accessed via teleconference. The meeting will be available via teleconference at 888–677–8206, Participant passcode: 5416339. To attend on site, obtain the call-in number and access code, submit written or brief oral comments, or request special accommodations for persons with disabilities, please register on-line at *http://nac.samhsa.gov/Registration/meetingsRegistration.aspx,* or communicate with SAMHSA's Acting Designated Federal Officer, Ms. Nadine Benton (see contact information below).

Substantive meeting information and a roster of Committee members may be obtained either by accessing the SAMHSA Committees' Web site at

https://nac.samhsa.gov/Women Services/index.aspx, or by contacting Ms. Benton. The transcript for the meeting will be available on the SAMHSA Committees' Web site within three weeks after the meeting.

Committee Name: SAMHSA's Advisory Committee for Women's Services.

Date/Time/Type: Wednesday, August 14, 2013 from 9 a.m. to 5:15 EDT: OPEN.

Place: SAMHSA, 1 Choke Cherry Road, SAMHSA VTC Room, Rockville, Maryland 20857.

Contact: Nadine Benton, Acting Designated Federal Officer, SAMHSA's Advisory Committee for Women's Services, 1 Choke Cherry Road, Rockville, Maryland 20857, Telephone: (240) 276–0127, Fax: (240) 276–2252 and Email: *nadine.benton@samhsa.hhs.gov.*

Cathy J. Friedman,

Public Health Analyst, SAMHSA.

[FR Doc. 2013–18103 Filed 7–26–13; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

National Advisory Council; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Substance Abuse and Mental Health Services Administration's (SAMHSA) National Advisory Council (NAC) on August 16, 2013.

The meeting will include discussions of the Future of SAMHSA, Wellness and Prescription Drug Abuse Issues.

The meeting is open to the public and will be held at the SAMHSA building, 1 Choke Cherry Road, Rockville, MD 20857 in the Sugarloaf Conference Room. Attendance by the public will be limited to space available. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions should be forwarded to the contact person on or before one week prior to the meeting. Oral presentations from the public will be scheduled at the conclusion of the meeting. Individuals interested in making oral presentations are encouraged to notify the contact on or before one week prior to the meeting. Five minutes will be allotted for each presentation.

The meeting may be accessed via teleconference. The meeting will be available via teleconference at 888–677–8206, Participant passcode: 9635740. To attend on site, obtain the call-in number and access code, submit written or brief oral comments, or request special accommodations for persons with disabilities, please register on-line at *http://nac.samhsa.gov/Registration/meetingsRegistration.aspx*, or communicate with SAMHSA's Acting Designated Federal Officer, Mr. Matthew Aumen (see contact information below).

Substantive meeting information and a roster of Committee members may be obtained either by accessing the SAMHSA Committees' Web site at *https://nac.samhsa.gov/WomenServices/index.aspx*, or by contacting Mr. Aumen. The transcript for the meeting will be available on the SAMHSA Committees' Web site within three weeks after the meeting.

Committee Name: SAMHSA's National Advisory Council.

Date/Time/Type: Friday, August 16, 2013 from 9 a.m. to 2:30 EDT: Open.

Place: SAMHSA, 1 Choke Cherry Road, SAMHSA Sugarloaf Conference Room, Rockville, Maryland 20857.

Contact: Matthew Aumen, Acting Designated Federal Officer of the SAMHSA National Advisory Council, 1 Choke Cherry Road, Rockville, Maryland 20857, Telephone: (240) 276–2419, Fax: (240) 276–2430 and Email: *matthew.aumen@samhsa.hhs.gov*.

Cathy J. Friedman,

Public Health Analyst, SAMHSA.

[FR Doc. 2013–18102 Filed 7–26–13; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given for the meeting of the Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Prevention National Advisory Council (CSAP NAC) on August 14, 2013.

A portion of the meeting will be open and will include discussion of the Affordable Care Act, as well as CSAP program developments.

The meeting will also include the review, discussion, and evaluation of grant applications. Therefore, a portion of the meeting will be closed to the public as determined by the SAMHSA Administrator in accordance with Title 5 U.S.C. 552b(c)(9)(B) and 5 U.S.C. App. 2, Section 10(d).

To attend the public portion of the meeting onsite, submit written or brief oral comments, request special accommodations for persons with disabilities, or participate via webcast, please register at the SAMHSA Committees' Web site, *http://nac.samhsa.gov/Registration/meetings Registration.aspx,* or communicate with the CSAP Council's Designated Federal Officer (see contact information below).

Substantive program information, a summary of the meeting, and a roster of committee members may be obtained either by accessing the SAMHSA Committee's Web site after the meeting, *http://nac.samhsa.gov/,* or by contacting Matthew J. Aumen. A transcript of the open portion of the meeting will also be available on the SAMHSA Web site after the meeting.

Committee Name: Substance Abuse and Mental Health Services; Administration Center for Substance Abuse Prevention National Advisory Council.

Date/Time/Type: August 14, 2013 from 9:30am to 3:30pm EDT: (Open); August 14, 2013 from 4:00pm to 5:00pm EDT: (Closed).

Place: SAMHSA, 1 Choke Cherry Road, Seneca Conference Room (lobby level), Rockville, MD 20857.

Contact: Matthew J. Aumen, Designated Federal Officer, SAMHSA CSAP NAC, 1 Choke Cherry Road, Rockville, Maryland 20857, Telephone: 240–276–2419, Fax: 240–276–2430 and Email: *matthew.aumen @samhsa.hhs.gov.*

Cathy J. Friedman,

Public Health Analyst, Substance Abuse and Mental Health, Services Administration.

[FR Doc. 2013–18105 Filed 7–26–13; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2013–0045]

Collection of Information under Review by Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting a revision of a currently approved collection of information:

1625–0087; U.S. Coast Guard International Ice Patrol (IIP) Customer Survey. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Comments must reach the Coast Guard and OIRA on or before August 28, 2013.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2013–0045] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT) and/or to OIRA. To avoid duplicate submissions, please use only one of the following means:

(1) *Online:* (a) To Coast Guard docket at *http://www.regulations.gov.* (b) To OIRA by email via: *OIRA-submission@omb.eop.gov* .

(2) *Mail:* (a) DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. (b) To OIRA, 725 17th Street NW., Washington, DC 20503, attention Desk Officer for the Coast Guard.

(3) *Hand Delivery:* To DMF address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* (a) To DMF, 202–493–2251. (b) To OIRA at 202–395–6566. To ensure your comments are received in a timely manner, mark the fax, attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov*. Additionally, copies are available from: Commandant (CG–612), ATTN: Paperwork Reduction Act Manager, US Coast Guard, 2703 Martin Luther King Jr Avenue SE., STOP 7710, Washington DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532 or fax 202–475–3929, for questions on these documents. Contact Ms. Barbara Hairston, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG 2013–0045], and must be received by August 28, 2013. We will post all comments received, without change, to *http://www.regulations.gov*. They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number [USCG–2013–0045], indicate the specific section of the document to which each comment applies, providing a reason for each comment. You may submit your comments and material online (via *http://www.regulations.gov*), by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the DMF. We recommend you include your name, mailing address, an email address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**, but please submit them by only one means. To submit your comment online, go to *http://www.regulations.gov*, and type ''USCG–2013–0045'' in the ''Keyword'' box. 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 will address them accordingly.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this Notice as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2013–0045'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the DMF in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

OIRA posts its decisions on ICRs online at *http://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0087.

Privacy Act

Anyone can search the electronic form of comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act statement regarding Coast Guard public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (78 FR 19503, April 1, 2013) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments.

Information Collection Requests.

Title: U.S. Coast Guard International Ice Patrol (IIP) Customer Survey.

OMB Control Number: 1625–0087.

Type of Request: Revision of a currently approved collection.

Respondents: Owners and operators of vessels transiting the North Atlantic.

Abstract: Customer satisfaction surveys are required by Executive Order 12862. The U.S. Coast Guard will use the information obtained from direct customers to measure satisfaction with current services and determine whether additional services are requested.

Forms: CG–16700.

Burden Estimate: The estimated annual burden is estimated to be 120 hours.

July 23, 2013.

R. E. Day,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 2013–18068 Filed 7–26–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3362–EM; Docket ID FEMA–2013–0001]

Massachusetts; Amendment No. 2 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the Commonwealth of Massachusetts (FEMA–3362–EM), dated April 17, 2013, and related determinations.

DATES: *Effective Date:* July 19, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this declared emergency is now April 15, 2013, through and including April 26, 2013.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2013–18130 Filed 7–26–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4128–DR; Docket ID FEMA–2013–0001]

North Dakota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of North Dakota (FEMA–4128–DR), dated July 12, 2013, and related determinations.

DATES: *Effective Date:* July 12, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 12, 2013, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of North Dakota resulting from severe storms and flooding during the period of May 17 to June 16, 2013, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of North Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to Section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Gary R. Stanley, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of North Dakota have been designated as adversely affected by this major disaster:

Benson, Bottineau, Cavalier, Dunn, Kidder, McHenry, McKenzie, McLean, Mountrail, Nelson, Pembina, Pierce, Ramsey, Sheridan, Stark, Towner, Walsh, Ward, and Wells Counties and the Spirit Lake Indian Reservation and the Turtle Mountain Band of Chippewa Indian Reservation for Public Assistance.

All counties and Indian Tribes in the State of North Dakota are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2013–18124 Filed 7–26–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4127–DR; Docket ID FEMA–2013–0001]

Montana; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Montana (FEMA–4127–DR), dated July 10, 2013, and related determinations.

DATES: *Effective Date:* July 10, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 10, 2013, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Montana resulting from flooding during the period of May 19 to June 3, 2013, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Montana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to Section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Thomas J. McCool, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Montana have been designated as adversely affected by this major disaster:

Blaine, Chouteau, Custer, Dawson, Fergus, Garfield, Hill, McCone, Musselshell, Petroleum, Rosebud, and Valley Counties and the Fort Belknap, Fort Peck, and Rocky Boy's Reservations for Public Assistance.

All counties and Indian Tribes in the State of Montana are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2013–18132 Filed 7–26–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4125–DR; Docket ID FEMA–2013–0001]

South Dakota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of South Dakota (FEMA–4125–DR), dated June 28, 2013, and related determinations.

DATES: *Effective Date:* June 28, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 28, 2013, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of South Dakota resulting from severe storms, tornado, and flooding during the period of May 24–31, 2013, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of South Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to Section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Gary R. Stanley, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of South Dakota have been designated as adversely affected by this major disaster:

Bennett, Corson, Lawrence, Lincoln, and Union Counties and the Pine Ridge Indian Reservation within Bennett County for Public Assistance.

All counties and Indian Tribes in the State of South Dakota are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to

Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2013–18129 Filed 7–26–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4126–DR; Docket ID FEMA–2013–0001]

Iowa; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Iowa (FEMA–4126–DR), dated July 2, 2013, and related determinations.

DATES: *Effective Date:* July 2, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 2, 2013, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Iowa resulting from severe storms, tornadoes, and flooding during the period of May 19 to June 14, 2013, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Iowa.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Direct Federal assistance is authorized. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to Section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Joe M. Girot, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Iowa have been designated as adversely affected by this major disaster:

Appanoose, Benton, Buchanan, Buena Vista, Butler, Cherokee, Chickasaw, Clay, Clayton, Crawford, Davis, Delaware, Des Moines, Fayette, Floyd, Franklin, Greene, Grundy, Hardin, Henry, Ida, Iowa, Jasper, Johnson, Jones, Keokuk, Lee, Linn, Louisa, Lyon, Mahaska, Marshall, Mitchell, Monona, Monroe, O'Brien, Palo Alto, Plymouth, Poweshiek, Sac, Sioux, Story, Tama, Wapello, Webster, Winnebago, and Wright Counties for Public Assistance. Direct federal assistance is authorized.

All counties within the State of Iowa are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2013–18133 Filed 7–26–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4129–DR; Docket ID FEMA–2013–0001]

New York; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New York (FEMA–4129–DR), dated July 12, 2013, and related determinations.

DATES: *Effective Date:* July 12, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 12, 2013, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of New York resulting from severe storms and flooding during the period of June 28 to July 4, 2013, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of New York.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to Section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Regis Leo Phelan, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of New York have been designated as adversely affected by this major disaster:

Allegany, Chenango, Cortland, Delaware, Franklin, Herkimer, Madison, Montgomery, Niagara, Oneida, Otsego, and Warren Counties for Public Assistance.

All counties within the State of New York are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2013–18126 Filed 7–26–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4117–DR; Docket ID FEMA–2013–0001]

Oklahoma; Amendment No. 8 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Oklahoma (FEMA–4117–DR), dated May 20, 2013, and related determinations.

DATES: *Effective Date:* July 18, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Oklahoma is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 20, 2013.

Craig, Haskell, McIntosh, and Ottawa Counties for Public Assistance, including direct federal assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2013–18127 Filed 7–26–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Extension, Without Change, of an Existing Information Collection; Comment Request.

ACTION: 30-Day Notice of Information Collection; 73–028; ICE Mutual Agreement between Government and Employers (IMAGE); OMB Control No. 1653–0048.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE), will submit the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. The information collection was previously published in the **Federal Register** on May 16, 2013, Vol. 78 No. 11639 allowing for a 60 day comment period. USICE received no comment during this period. The purpose of this notice is to allow an additional 30 days for public comments.

Written comments and suggestions from the public and affected agencies regarding items contained in this notice and especially with regard to the estimated public burden and associated response time should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for U.S. Immigration and Customs Enforcement, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

Comments are encouraged and will be accepted for sixty days until August 28, 2013. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, without change, of an existing information collection.

(2) *Title of the Form/Collection:* Immigration and Customs Enforcement (ICE) Mutual Agreement between Government and Employers (IMAGE).

(3) *Agency form number, if any and the applicable component of the Department of Homeland Security sponsoring the collection:* (No. Form 73–028); U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Businesses or other for-profit and not-for-profit institutions. The Immigration and Customs Enforcement Mutual Agreement between Government and Employers (IMAGE) program is the outreach and

education component of the Office of Homeland Security Investigations (HSI) Worksite Enforcement (WSE) program. IMAGE is designed to build cooperative relationships with the private sector to enhance compliance with immigration laws and reduce the number of unauthorized aliens within the American workforce. Under this program, ICE will partner with businesses representing a cross-section of industries. A business will initially complete and prepare an IMAGE application so that ICE can properly evaluate the company for inclusion in the IMAGE program. The information provided by the company plays a vital role in determining that company's admissibility into the program. While 8 U.S.C. 1324(a) makes it illegal to knowingly employ a person who is not in the U.S. legally, there is no requirement for any entity in the private sector to participate in the program and the information obtained from the company should also be available to the public.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100 responses at 90 minutes (1.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 150 annual burden hours.

Dated: July 23, 2013

Scott Elmore,

Forms Manager, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2013–18032 Filed 7–26–13; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Reinstatement, Without Change; Comment Request

ACTION: 60-Day Notice of Information Collection for Review; Form No. I–333, Obligor Change of Address; OMB Control No. 1653–0042.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE), will submit the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until September 27, 2013.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), Scott Elmore, Forms Manager, U.S. Immigration and Customs Enforcement, 801 I Street NW., Mailstop 5800, Washington, DC 20536; (202) 732–2601.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement of an expired collection.

(2) *Title of the Form/Collection:* Obligor Change of Address.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–133, U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual or Households, Business or other non-profit. The data collected on this form is used by ICE to ensure accuracy in correspondence between ICE and the obligor. The form serves the purpose of standardizing obligor notification of any changes in their address, and will facilitate communication with the obligor.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 12,000 responses at 15 minutes (.25 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,000 annual burden hours.

Comments and/or questions; request for a copy of the proposed information collection instrument, with instructions; or inquires for additional information should be directed to Scott Elmore, Forms Management, U.S. Immigration and Customs Enforcement, 801 I Street NW., Stop 5800, Washington, DC 20536; (202) 732–2601.

Dated: July 23, 2013.

Scott Elmore,

Forms Management, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2013–18062 Filed 7–26–13; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[FR–5727–N–01]

Rebuild by Design—Competition and Registration

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: Under the authority of the America COMPETES Reauthorization Act of 2011, HUD and the Hurricane Sandy Rebuilding Task Force (Task Force) announce REBUILD BY DESIGN, a multi-stage regional design competition to promote resilience for the Hurricane Sandy-affected region. The goal of the competition is two-fold: to promote innovation by developing regionally-scalable but locally-contextual solutions that increase resilience in the region, and to implement selected proposals with both public and private funding dedicated to this effort.

DATES: *Application Due Date:* Applicants were required to submit a proposal in response to the Request for Qualifications in Phase One to *rebuildbydesign@hud.gov,* no later than 5:00 p.m. EDT on Friday, July 19, 2013.

FOR FURTHER INFORMATION CONTACT: Kevin Bush, *rebuildbydesign@hud.gov*

SUPPLEMENTARY INFORMATION:

I. Introduction

In an effort to promote resilience for the Hurricane Sandy-affected region, HUD and the Task Force are holding a multi-stage design competition entitled REBUILD BY DESIGN. The goal of the competition is to attract world-class talent, promote innovation, and develop projects that will actually be built. Once

the best ideas are identified, HUD will make funds available through its Community Development Block Grant Disaster Recovery (CDBG–DR) program for project implementation along with other public and private funds. Examples of design solutions are expected to range in scope and scale—from large-scale green infrastructure to small-scale residential resiliency retrofits. Additional information is available at *http://portal.hud.gov/hudportal/HUD?src=/sandyrebuilding/rebuildbydesign*

II. Objectives

The competition seeks to bring local, regional, and international knowledge to bear in order to:

(1) Contribute to a better understanding of the region's vulnerabilities, strengths, and interdependencies;

(2) Generate design proposals that focus on regionally applicable solutions, increase resilience, develop and promote innovation, and integrate local efforts in the region;

(3) Build capacity of local communities and federal agencies while promoting an integrated regional approach;

(4) Connect to local efforts and strengthen the collaboration within governments and between government, business, academic, non-profit, and other organizations;

(5) Ignite innovation, outside-the-box perspectives, and address new trends; and

(6) Execute world-class projects with regional impact (either large scale or replicable across the region).

III. Design Categories

While REBUILD BY DESIGN may result in design solutions that are applicable across the United States, design teams are asked to focus on the most-affected and most-vulnerable areas of the Sandy-affected region within Connecticut, Maryland, New Jersey, New York, and Rhode Island. This is a complex region, with differing governance structures, culture, etc. To help navigate this complexity, the competition is organized around four focus areas: coastal communities, high-density urban environments, ecological and water body networks, and a catch-all category of unidentified or unexpected focus. Design teams will be expected to select one of the four focus areas, outlined below:

(1) Coastal communities: This category focuses on small- to mid-sized coastal communities. These communities are characterized by limited capacity and high coastal vulnerability. Here, there is often a tension between environmental and economic systems (i.e. the tourism industry is dependent on the environment and also vulnerable to it).

(2) High-density urban environments: These economically-significant areas have impacts on both the region and the nation as a whole. These communities have highly complex built and human systems and significant economic value for the entire region. When storms like Sandy hit these communities they cause major disruptions to both the local and regional economy.

(3) Ecological and water body networks: These networks are regional by nature; watersheds and ecosystems disregard administrative boundaries and must be considered from the regional scale. This category focuses on the interdependencies between the built and natural environments.

(4) The unidentified and unexpected: This category allows for selected teams to pursue unexpected questions and innovative proposals outside of the framework provided above. This is an open category to encourage outside-the-box approaches and proposals.

IV. Competition Stages

The competition consists of four stages, each with its own process, timeline and deliverable:

Stage One: Request for qualifications and selection of 5 to 10 Design Teams (July 2013)

—Request for qualifications and concepts issued.
—Selection of teams to participate.

During Stage One, applicants were required to submit a short proposal, detailed in the REBUILD BY DESIGN Request for Qualifications (see Rebuild by Design Web site: *http://portal.hud.gov/hudportal/HUD?src=/sandy rebuilding/rebuildbydesign*), which summarizes their interdisciplinary expertise and presents an initial approach related to one of the four focus areas. Applicants were required to submit both an idea on how they want to work on this (process) and what their initial thinking is on the issues at stake and the possible concepts that might emerge. Applicants were asked to illustrate these concepts in regard to what vulnerabilities their team would focus on. These concepts will serve as illustrations of the applicant's approach and innovative thinking; however, it is expected that selected Design Teams may need to adjust their approach based on the analysis process in Stage Two.

Applicants were required to include professional expertise in at least three of the following fields: infrastructure engineering, landscape design, urban design, architecture, land-use planning, industrial design, community engagement, and communications design. Applicants with additional expertise in the following fields are preferred: community building, social science, economics, ecology, hydrology, water safety, transportation, resilience, sustainability, project management, finance, arts, graphic design, and others. Applicants must have demonstrable experience in interdisciplinary research, analysis, and design—especially related to the spatial impacts of ecological, economic, and social development on the regional scale.

While by no means exhaustive, a Starter Kit of helpful information about the region was compiled and was also available on the Rebuild by Design Web site (*http://portal.hud.gov/hudportal/HUD?src=/sandyrebuilding/rebuildbydesign*). It contains a preliminary list of relevant datasets, general analyses, and existing plans.

At the end of Stage One, the Task Force, serving as the Selection Committee, will identify five to ten applicants to proceed to Stages Two and Three as Design Teams.

Stage One Timeline:

June 19, 2013 Request for Qualifications and Approach is Released

July 19, 2013 Deadline to Submit Response

July 25, 2013 Review/Selection of 5–10 Design Teams

Early August, 2013 Public Announcement of selected Design Teams

Deliverables: PDF proposal outlining applicant's qualifications and conceptual approach.

Stage Two: Analysis of the region through collaborative process (August—October 2013)

—Research and collaborative analysis of the region with a wide-variety of stakeholders.
—Identification of key design opportunities.

The selected Design Teams will participate in an intense participatory process that will involve HUD and its partners in the region. This process will include engagement with a wide-range of stakeholders (including state and local government) and experts to develop a comprehensive understanding of the region, its interdependencies, key vulnerabilities, and areas that warrant integrated design thinking and solutions. Teams that are selected to participate in Stage Two will receive $100,000 each to conduct their work.

Teams will be expected to participate in the following over the three-month analysis stage:

—Ongoing seminars around relevant themes and knowledge;
—A series of team symposia (one every three weeks) to discuss common needs for information/resources;
—Several regional site visits to interact with local stakeholders, engage the public, and witness affected spaces and structures; and
—An opening and closing conference for the analysis stage.

Content from this facilitated analysis process, being collaborative in nature and involving a wide-range of stakeholders, will be public, meaning that it can be used by all teams and will be collected throughout the process and presented through a variety of mediums. This iterative research process will underpin the analysis conducted by each of the Design Teams in their chosen focus area, and inform each Design Team's production of a research report and public presentation.

As part of the research and analysis stage, Design Teams must also identify at least three to five design opportunities resulting from their research. Design opportunities are defined as key opportunities or key projects that have the potential for maximum impact on the region's strengths and vulnerabilities. These opportunities can be both site-specific and/or representative of a typology that is regionally replicable.

Through a collaborative process with the Design Teams, Competition Jury (see below), and other stakeholders, each Design Team will end up with one design opportunity for development and refinement in Stage Three in collaboration with state and local communities. By defining the design questions through the competition process, this competition will incorporate the regional scale and perspective and will reflect the insight and interests of state and local stakeholders. Design Teams will then select one design opportunity to focus on in Stage 3.

Stage Two Timeline:

Mid—August, 2013 Opening Conference

August—October Ongoing Seminars and Team Symposia

August—October Six Regional Site Visits (exact sites TBD)

Late October, 2013 Closing Conference

Deliverables: Each Design Team will be expected to submit a highly-accessible digital research report that includes visual and non-visual analysis, and identification of at least three to five design opportunities within their focus area. Design Teams will publicly present their research at a conference in October 2013. These analyses will be compiled into a public catalog of submissions and synthesis document that could be used by a wide variety of stakeholders. The details and format for each of the Stage Two deliverables will be the subject of discussions and agreement with selected Design Teams.

Stage Three: Development of design solutions and community/partner engagement (November 2013–February 2014)

☐ Development of site-specific schematic design solutions

☐ Community engagement and intense collaboration with state/local government partners

During this stage, Design Teams will receive an additional $100,000 to design site-specific proposals for locally-implementable and/or regionally-scalable projects. In addition to design drawings, Design Teams will be expected to propose a strategy for implementation that identifies partners, funding, and timing. The design development phase will involve a facilitated, iterative community engagement process with all levels of government. Design Teams will engage with local political leadership in order to identify specific sites and individual projects relevant to the design opportunity identified in Stage Two, and to partner with a local or state government entity.

The Competition Jury will evaluate the final design proposals (based on criteria that will be provided) and identify winning projects that may be implemented by local or state governments with federal disaster recover resources. Winning projects will be presented publicly at a regional planning and design conference in the Sandy-affected region, as well as at TBD international venues.

Stage Three partners will include the Municipal Art Society of New York, the Regional Plan Association, and the Van Alen Institute. These partners will develop an iterative design process, rooted in the research from Stage Two, to help connect Design Teams with key partners and develop place-based design solutions.

Stage Three Timeline: TBD

Deliverables: Design and refinement of place-based design solutions implementable with CDBG-DR and other funding.

Stage Four: Implementation of winning designs by state and/or local governments with federal disaster recovery funds (March 2014—TBD)

☐ Design development of winning design solutions

☐ Implementation of winning design solutions with federal disaster recovery funds A winning Design Team or Design Teams will proceed from Stage Three to Stage Four and work closely with state and/or local government entities to implement their winning designs and key projects. Following the announcement of the competition winners, HUD may make an allocation of CDBG-DR funds for Sandy impacts and identify how these funds may be used to implement the winning projects/proposals.

Stage Four Timeline: Spring 2014

Deliverables: State or local governments receiving a final round CDBG-DR allocation will submit an action plan or action plan amendment to HUD identifying how it intends to use the funds consistent with guidelines and requirements published by Notice in the **Federal Register**.

V. Managing Partners and Jury

Managing Partners

While the Task Force is launching the competition, lead responsibility will transfer to HUD as the Task Force winds down in late summer/early fall 2013. The National Endowment for the Arts is lending their expertise to advise the Task Force and HUD in management and design of the overall process. In addition, many other federal departments and agencies are involved in the process both through the Task Force and in subsequent stages.

The Task Force is working with the Rockefeller Foundation and New York University's Institute of Public Knowledge, in collaboration with regional and other non-profit partners, to design and run the analysis process in Stages Two and Three.

Jury

The REBUILD BY DESIGN Jury functions as an expert panel throughout the competition, providing critical input during the analysis and design stages. The Jury will also help evaluate submissions at the end of Stage Two and ultimately judge the final designs at the end of Stage Three.

Subject to the requirements of 15 U.S.C. 3719(k), the Secretary of HUD will appoint one or more qualified individuals to act as jury members for this contest and may appoint himself as a jury member as well. Jury members

may include individuals from outside HUD, including from the private sector. Jury members will operate in a transparent manner.

A jury member may not have a personal or financial interest in, or be an employee, officer, director, or agent of any entity that is a registered entrant in this contest, and may not have a familial or financial relationship with an individual who is a registered entrant.

Specific tasks related to the judging process may be delegated to HUD employees or employees of a collaborating Federal agency. Third parties may perform judging tasks subject to supervision by HUD or by a collaborating Federal agency.

Jury members shall have the authority to obtain from any entrant additional information, clarification of information, or assistance in resolving any technical issues relating to the installation, use, testing or evaluation of any entry, so long as doing so causes no substantial benefit or detriment to any entrant.

VI. Eligibility Rules for Participating in the Competition

Teams are required to demonstrate professional expertise in at least three of the following fields: infrastructure engineering, landscape design, urban design, architecture, land use planning, community development, communications design, public finance, or real estate. Teams with additional expertise in the following fields are encouraged: social-science, economic development, ecology, hydrology, water safety, transportation, resilience, sustainability, project management, finance, arts, graphic design, industrial design, or other disciplines as appropriate. Teams must have demonstrable experience in interdisciplinary research, analysis, and design—especially related to the spatial impacts of ecological, economic, and social development on the regional scale. All levels of experience were encouraged to apply in order to attract innovative thinking and new approaches, however, at least one team member must have experience working with publically funded projects.

In accordance with section 24(g) of the America COMPETES Reauthorization Act of 2010, any private entity participating in the competition must be incorporated in and maintain a primary place of business in the United States, and in the case of an individual, whether participating singly or in a group, must be a citizen or permanent resident of the United States. An individual or entity shall not be deemed ineligible because the individual or entity used Federal facilities or consulted with Federal employees during a competition if the facilities and employees are made available to all individuals and entities participating in the competition on an equitable basis.

VII. Registration Process for Participants

Applicants must submit a proposal in response to the Request for Qualifications in Phase One to *rebuildbydesign@hud.gov* no later than 5:00 p.m. EDT on Friday, July 19, 2013.

All proposals were required to be submitted in PDF format; hardcopy proposals were not accepted. Proposals were limited to 12 one-sided pages (format US Letter), including text, images, and/or drawings. Font size could not exceed 11 points; file size cannot exceed 20MB. Applicants were required to address the following in their proposals:

—List of team members (1 page): Include each team member's name, affiliation, contact information, and Web site. Clearly identify a single lead contact for follow up.

—Focus area: Clearly identify your team's selected focus area (i.e. coastal communities, high-density urban environments, ecological and water body networks, or other). See Page 1 of the Competition Brief for detailed information.

—Summary of team's strengths and relevant experience (2–3 pages): Provide a narrative summary of the team's collective strengths and experience relevant to the goals of the competition and to the team's selected focus area. Clearly articulate each team member's specific contribution to this effort and the interdisciplinary strength that distinct the team. Discuss past collaborative efforts among team members, if applicable.

—Selected relevant projects and expertise (3–6 pages): Submit highlights of previous work relevant to the goals of the competition and to the team's research focus and design approach. Include both visual and non-visual examples. Do not include links to external documents.

—Conceptual approach (2–4 pages): Include a narrative description of the team's proposed research and design approach and initial ideas within one of the four focus areas. Submit your ideas on how the team wants to work (process) and what your initial thinking is on the issues at stake and the possible concepts that might emerge. Illustrate these concepts in regard to what vulnerabilities your team would focus on. Elaborate on your strategy for connecting research and analysis activities to the development of implementable, place-based design solutions. Note that these ideas are illustrations for the team's approach and innovative thinking. Selected Design Teams will finalize their focus based off of their research during Stage Two.

For more information, please consult Appendix A of the competition Design Brief at: *http://portal.hud.gov/hudportal/HUD?src=/sandyrebuilding/rebuildbydesign*

VIII. Selection Process

Designees from the Hurricane Sandy Rebuilding Task Force will serve as the Stage One Selection Committee and will select 5–10 design teams based on the criteria listed below. The Task Force is chaired by HUD Secretary Shaun Donovan and is made up of executive-level representation from over 20 federal departments and agencies including White House offices. Applicants that are chosen by the Selection Committee will be invited to participate in Stages Two and Three, at which point they will be expected to enter into an agreement and provided a Scope of Work. Selected Design Teams will be provided $100,000 to participate in Stage Two. Teams proceeding to Stage Three will be provided with another $100,000 to advance their design proposals. All winning design teams selected to advance from Stage One are expected to continue to participate through Stage Three, although HUD reserves the right to remove participants that fail to comply with the Scope of Work agreement entered into at the beginning of Stage Two. The Jury will select the finalists that advance to Stage Four.

IX. Evaluation Criteria

The Stage One Selection Committee will identify Design Teams based on the following criteria:

1. Team composition

a. Depth of interdisciplinary experience.

b. Capacity to work collaboratively on interdisciplinary teams.

2. Quality of past work

a. Demonstrated excellence in each of the team member's respective disciplines.

b. Commitment to participatory design and public engagement—especially to underserved populations.

c. Relevance of the team's experience to the proposed research focus and design approach.

d. Track record of publically-funded, built projects. NOTE: This criterion is not required for all design team

members; however, someone on the team must have experience successfully working through a public process.

3. Clarity, style, and thoroughness of proposal

Rules and Regulations

1. All proposals must have been sent in English.
2. Proposals must not have exceed 12 single-sided pages and be no larger than 20 megabytes.
3. Individual practitioners or offices may participate on multiple teams for the purpose of a submitting a response to the RFQ, however if selected they must select one team on which they will serve.
4. If your team is selected to proceed to Stages Two and Three then any changes to team members must approved by the Task Force/HUD.

Amount of the Prize

Applicants that are chosen by the Selection Committee will have the opportunity to participate in a facilitated analysis and design process, over the course of six months, gain access to a wide-variety of stakeholders, and be designated as a REBUILD BY DESIGN team. These Design Teams will be provided $100,000 to participate in Stage Two and $100,000 to participate in Stage Three. At the end of Stage Three, the competition Jury will evaluate Design Teams' final design solutions/projects and winning proposals to be implemented.

Prizes awarded under this competition in Stage Two and Stage Three as described above will be paid by electronic funds transfer and may be subject to Federal income taxes. HUD will comply with the Internal Revenue Service withholding and reporting requirements, where applicable.

Additional Information—Intellectual Property (IP)

a. Neither HUD nor the Task Force is responsible for a registered contestant's or entrant's lack of compliance with copyright, trademark, patent or other Federal law. Contestants and entrants will hold harmless, defend, and indemnify the Federal Government and any agency or component thereof from and against any suit, claim, demand, liability, damages, costs and expenses (including attorneys' fees and costs of defense), of whatever nature, whether groundless, false or fraudulent, arising out of any use, licensing or relicensing of any IP that is incorporated in the entrant's entry.

b. Contestants and entrants are responsible for obtaining all third-party licenses required to allow HUD, the Task Force and its contractors to receive any and all IP installed on any virtual machine, to run any and all testing software or scripts, and to demonstrate an entrant's product.

c. HUD may in its sole and absolute discretion choose to negotiate with any entrant to acquire, license, use or convey any other intellectual property developed in connection with this contest.

Public Comment

With this notice, HUD invites the public to comment on the information collection request described above. HUD will address all comments in a follow up notice to this publication.

For more information, visit the Rebuild By Design Web site at *http://portal.hud.gov/hudportal/HUD?src=/sandyrebuilding/rebuildbydesign.*

Dated: July 23, 2013.

Laurel Blatchford,

Executive Director, Hurricane Sandy Rebuilding Task Force.

[FR Doc. 2013–18163 Filed 7–26–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–IA–2013–N163: FXIA16710900000–134–FF09A30000]

Notice of Establishment of the Advisory Council on Wildlife Trafficking

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of establishment and request for nominees.

SUMMARY: The Secretary of the Interior (Secretary), after consultation with the Co-Chairs of the Presidential Task Force on Wildlife Trafficking (Task Force), is announcing the establishment of the Advisory Council on Wildlife Trafficking (Council) under the Federal Advisory Committee Act. The Council will make recommendations to the Task Force and provide it with ongoing advice and assistance.

The Department of the Interior is also seeking nominations for individuals to be considered as Council members.

DATES: Nominations must be received by August 13, 2013.

ADDRESSES: Send nominations to Mr. Bryan Arroyo, Assistant Director, International Affairs, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Arroyo, Designated Federal Officer, International Affairs, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Arlington, VA 22203; *Bryan_Arroyo@fws.gov;* Phone: (202) 208–6394; Fax (202) 208–5618.

SUPPLEMENTARY INFORMATION:

Council's Role

The Council will conduct its operations in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. Appendix). It will report to the Task Force through the Secretary of the Interior or his/her designee and function solely as an advisory body. It will advise and make recommendations on issues relating to combating wildlife trafficking, including, but not limited to:

(1) Effective support for anti-poaching activities,

(2) Coordinating regional law enforcement efforts,

(3) Developing and supporting effective legal enforcement mechanisms, and

(4) Developing strategies to reduce illicit trade and reduce consumer demand for illegally traded wildlife, including protected species.

The Council will meet approximately 1–2 times annually, and at such time as designated by the Designated Federal Officer.

Nominating Potential Council Members

The Department of the Interior is seeking nominations for individuals to be considered as Council members. Nominations should include a resume providing contact information and an adequate description of the nominee's qualifications, including information that would enable the Department of the Interior to make an informed decision regarding meeting the membership requirements of the Council.

Requirements for Council Membership

The Council will consist of eight members. The Secretary or his/her designee, in consultation with the Secretary of State and the Attorney General or their designees, will select and appoint members of the Council. The appointments will be for 3-year terms, except initially the Secretary will appoint four members for 2-year terms and four members for 3-year terms in order to stagger appointments to retain institutional knowledge. The Secretary will designate one of the members as the Chair. Members must not be employees of the Federal Government. Membership must include knowledgeable individuals from the private sector, former governmental officials,

nongovernmental organizations, and others who are in a position to provide expertise and support to the Task Force. No individual who is currently registered as a Federal lobbyist is eligible to serve as a member of the Council.

Certification

I hereby certify that the Advisory Council on Wildlife Trafficking is necessary and is in the public interest in connection with the performance of duties pursuant to the Department of the Interior's authority under Executive Order 13648, ''Combating Wildlife Trafficking,''

July 1, 2013.

Dated: July 24, 2013.

Sally Jewell,

Secretary of the Interior.

[FR Doc. 2013–18194 Filed 7–25–13; 11:15 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[K00621 1314 R3B30]

Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Lac du Flambeau Band Fee-to-Trust Acquisition and Casino Project in Shullsburg, Wisconsin

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: In compliance with the National Environmental Policy Act (NEPA), of 1969, this notice advises the public that the Bureau of Indian Affairs (BIA) intends to gather the information necessary for preparing an Environmental Impact Statement (EIS) for a fee-to-trust transfer and casino project in the City of Shullsburg, Wisconsin, proposed by the Lac du Flambeau Band of Lake Superior Chippewa Indians (Tribe). This notice also announces a public scoping meeting to identify potential issues, alternatives, and content for inclusion in the EIS.

DATES: The public scoping meeting will be held Thursday, August 15, 2013, and will begin at 6 p.m. and last until the last public comment is received. Written comments on the scope of the EIS or implementation of the proposal must arrive by August 30, 2013.

ADDRESSES: The public scoping meeting will be held at the Shullsburg High School, 444 N. Judgement Street, Shullsburg, Wisconsin. You may mail, hand deliver, or telefax written comments to Diane Rosen, Regional Director, Midwest Regional Office, Bureau of Indian Affairs, 5600 West American Boulevard, Suite 500, Bloomington, Minnesota 55437, Telefax (612) 713–4401.

FOR FURTHER INFORMATION CONTACT: Scott Doig, Regional Environmental Protection Specialist, Midwest Regional Office, Bureau of Indian Affairs, 5600 West American Boulevard, Suite 500, Bloomington, Minnesota 55437; telephone: (612) 725–4514.

SUPPLEMENTARY INFORMATION: The Tribe's application requests the Department to transfer into trust 20 acres of land located within the municipal limits of the City of Shullsburg, Wisconsin. The purpose of the proposed action is to help meet the Tribe's economic development needs in Wisconsin. This would be accomplished by development of a gaming resort facility with Class III and Class II gaming, hotel, restaurant and retail facilities, entertainment and convention facilities, recreational vehicle park, sportsman's club, maintenance facilities, and surface parking. The property is located along the north side of State Highway 11 (SH–11) near the City of Shullsburg, Lafayette County, Wisconsin, approximately one-half mile west of the intersection of SH–11 and County Road O. The site is proposed to be accessible from SH–11.

Areas of environmental concern so far identified that the EIS will address include soils and geology, air quality, water supply, wastewater and storm water, biological resources, traffic and transportation, cultural and historic resources, socioeconomics, public health and safety, noise, and visual resources/aesthetics. Alternatives identified for analysis include the proposed action, a no-action alternative, a non-gaming alternative, and an alternative gaming site location. The range of issues addressed in the EIS may also be revised based on the comments received at the scoping meeting and in response to this notice.

Submittal of Public Comments: Please include your name, return address and the caption specifying ''Scoping Comments for Proposed Lac du Flambeau Band Casino'' on the first page of your written comments.

Public Comment Availability: Comments, including names and addresses of respondents, will be available for public review at the BIA address shown in the **ADDRESSES** section during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Before including your address, telephone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment that your personal identifying information be withheld from public review, the BIA cannot guarantee that this will occur.

Authority: This notice is published in accordance with § 1503.1 of the Council on Environmental Quality Regulations (40 CFR 1500 et seq.) and the Department of the Interior Regulations (43 CFR part 46) implementing the procedural requirements of the NEPA (42 U.S.C. 4321 et seq.), and in accordance with the exercise of authority delegated to the Assistant Secretary—Indian Affairs by part 209 of the Department Manual.

Dated: July 22, 2013.

Lawrence S. Roberts,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 2013–18114 Filed 7–26–13; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–13508; 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 July 06, 2013. Pursuant to section 60.13 of 36 CFR Part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by August 13, 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: July 15, 2013.

Alexandra Lord,

Acting Chief, National Register of Historic Places/National Historic Landmarks Program.

ARIZONA

Maricopa County

Kirkland—McKinney Ditch, 1400 & 1500 blks., E. 8th St., Tempe, 13000604

COLORADO

Kiowa County

Crow—Hightower House, 909 Maine St., Eads, 13000605

Eads Community Church, 110 E. 11th St., Eads, 13000606

Eads School Gymnasium, W. 10th & Slater Sts., Eads, 13000607

Hotel Holly—Haswell Hotel, 200 4th St., Haswell, 13000608

GEORGIA

Brooks County

Liberty Baptist Church, Liberty Church Rd., Grooverville, 13000609

NEW YORK

Otsego County

Hartwick Historic District, Roughly NY 205, Cty Rd. 11 & Weeks Rd., Hartwick, 13000610

Old Hartwig Village Cemetery, 2862 Cty. Rd. 11, Hartwick, 13000611

TEXAS

Tarrant County

Sealy, J.L., Building, 801 S. Main St., Fort Worth, 13000612

Travis County

Cranfill Apartments, 1909 Cliff St., Building B, Austin, 13000613

Seaholm Power Plant, 800 W. Cesar Chavez St., Austin, 13000614

Williamson County

Olive Street Historic District, Olive St. between E. University Ave. & 17th St. plus a portion of E. 15th St., Georgetown, 13000615

[FR Doc. 2013–18067 Filed 7–26–13; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[MMAA104000]

Gulf of Mexico, Outer Continental Shelf (OCS), Western Planning Area (WPA) Oil and Gas Lease Sale 233

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of Availability of a Record of Decision.

SUMMARY: BOEM has prepared a Record of Decision (ROD) for WPA Lease Sale 233 on the *Gulf of Mexico OCS Oil and Gas Lease Sales: 2013–2014; Western Planning Area Lease Sale 233, and Central Planning Area Lease Sale 231; Final Supplemental Environmental Impact Statement (WPA 233/CPA 231 Supplemental EIS).* WPA Lease Sale 233, scheduled for August 28, 2013, is the second WPA lease sale scheduled in the *Proposed Final Outer Continental Shelf Oil & Gas Leasing Program: 2012–2017.* The lease sale is in the Gulf of Mexico's WPA off the States of Texas and Louisiana. In making its decision, BOEM considered alternatives to the proposed action and the potential impacts as presented in the WPA 233/CPA 231 Supplemental EIS and all comments received throughout the National Environmental Policy Act (NEPA) process. The WPA 233/CPA 231 Supplemental EIS evaluated the environmental and socioeconomic impacts for WPA Lease Sale 233.

SUPPLEMENTARY INFORMATION: In the WPA 233/CPA 231 Supplemental EIS, BOEM evaluated three alternatives, which are summarized below:

Alternative A—The Proposed Action: This is BOEM's preferred alternative identified in the WPA 233/CPA 231 Supplemental EIS. This alternative would offer for lease all unleased blocks within the WPA for oil and gas operations. A subset of Alternative A includes the following exceptions:

(1) whole and partial blocks within the boundary of the Flower Garden Banks National Marine Sanctuary (i.e., the boundary as of the publication of the WPA 233/CPA 231 Supplemental EIS).

(2) whole blocks and portions of blocks that lie within the former Western Gap and that lie within 1.4 nautical miles north of the continental shelf boundary between the United States and Mexico (the ''1.4 nautical mile buffer'').

The proposed WPA lease sale area encompasses about 28.58 million acres. As of May 2013, approximately 20.6 million acres of the proposed WPA lease sale area are currently unleased. The estimated amount of resources projected to be developed as a result of proposed WPA Lease Sale 233 is 0.116–0.200 billion barrels of oil (BBO) and 0.538–0.938 trillion cubic feet (Tcf) of gas.

Alternative B—The Proposed Action Excluding the Unleased Blocks Near Biologically Sensitive Topographic Features: This alternative would offer for lease all unleased blocks within the proposed WPA lease sale area, as described for the proposed action (Alternative A), with the exception of any unleased blocks subject to the Topographic Features Stipulation.

Alternative C—No Action: This alternative is the cancellation of proposed WPA Lease Sale 233 and is identified as the environmentally preferred alternative.

After careful consideration, BOEM has selected a subset of the proposed action, identified as BOEM's preferred alternative (Alternative A) in the WPA 233/CPA 231 Supplemental EIS. Although considered as part of the proposed action identified in the WPA 233/CPA 231 Supplemental EIS, BOEM is excluding from WPA Lease Sale 233 whole and partial blocks within the boundary of the Flower Garden Banks National Marine Sanctuary (*i.e.,* the boundary as of the publication of the WPA 233/CPA 231 Supplemental EIS). Also excluded are whole blocks and portions of blocks that lie within the former Western Gap and that lie within 1.4 nautical miles (nmi) north of the Continental Shelf boundary between the United States and Mexico (the 1.4 nmi buffer). A Continental Shelf boundary treaty between the United States and the United Mexican States currently prohibits exploration and development in the 1.4 nmi buffer. As such, BOEM is excluding the 1.4 nmi buffer from WPA Lease Sale 233. BOEM's selection of this subset of the preferred alternative reflects a balancing of the need for orderly resource development with protection of the human, marine, and coastal environments, while also ensuring that the public receives an equitable return for these resources and that free-market competition is maintained.

Record of Decision Availability: To obtain a single printed or CD–ROM copy of the ROD for proposed WPA Lease Sale 233, you may contact BOEM, Gulf of Mexico OCS Region, Public Information Office (GM 250I), 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394 (1–800–200–GULF). An electronic copy of the ROD is available on BOEM's Internet Web site at *http://boem.gov/Environmental-Stewardship/Environmental-Assessment/NEPA/nepaprocess.aspx.*

FOR FURTHER INFORMATION CONTACT: For more information on the ROD, you may contact Mr. Gary D. Goeke, Bureau of Ocean Energy Management, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard (GM 623E), New Orleans, Louisiana 70123–2394. You may also contact Mr. Goeke by telephone at (504) 736–3233.

Authority: This NOA is published pursuant to the regulations (40 CFR 1506) implementing the provisions of the NEPA of 1969, as amended (42 U.S.C. 4321 *et seq.* [1988]).

Dated: July 17, 2013.

Tommy P. Beaudreau,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2013–18173 Filed 7–26–13; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

Western Gulf of Mexico Planning Area (WPA) Outer Continental Shelf (OCS) Oil and Gas Lease Sale 233 (WPA Sale 233); MMAA104000

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Final Notice of Sale.

SUMMARY: On Wednesday, August 28, 2013, BOEM will open and publicly announce bids received for blocks offered in WPA Sale 233, in accordance with the provisions of the OCS Lands Act (OCSLA, 43 U.S.C. 1331–1356a, as amended) and the implementing regulations issued pursuant to OCSLA (30 CFR parts 550 and 556). The WPA 233 Final Notice of Sale (NOS) package (Final NOS Package) contains information essential to potential bidders, and bidders are charged with knowing the contents of the documents contained in the Final NOS Package. The Final NOS Package is available at the address and Web site below.

DATES: Public bid reading for WPA Sale 233 will begin at 9:00 a.m., Wednesday, August 28, 2013, at the Mercedes-Benz Superdome, 1500 Sugarbowl Drive, New Orleans, Louisiana 70112. The lease sale will be held in the St. Charles Club Room on the second floor (Loge Level). Entry to the Superdome will be on the Poydras Street side of the building through Gate A on the Ground Level; parking will be available at Garage 6. All times referred to in this document are local New Orleans times, unless otherwise specified.

Bid Submission Deadline: BOEM must receive all sealed bids between 8:00 a.m. and 4:00 p.m. on normal working days, and from 8:00 a.m. to the Bid Submission Deadline of 10:00 a.m. on Tuesday, August 27, 2013, the day before the lease sale. For more information on bid submission, see Section VII, ''Bidding Instructions,'' of this document.

ADDRESSES: Interested parties can obtain a Final NOS Package by contacting the Gulf of Mexico (GOM) Region at: Gulf of Mexico Region Public Information Office, Bureau of Ocean Energy Management, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, (504) 736–2519 or (800) 200–GULF, or by visiting the BOEM Web site at *http://www.boem.gov/About-BOEM/BOEM-Regions/Gulf-of-Mexico-Region/Index.aspx.*

Table of Contents

This Final NOS includes the following sections:

I. Lease Sale Area
II. Statutes and Regulations
III. Lease Terms and Economic Conditions
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VIII. Bidding Rules and Restrictions
IX. Forms
X. The Lease Sale
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I. Lease Sale Area

Areas Offered for Leasing

In WPA Sale 233, BOEM is offering to lease all blocks and partial blocks listed in the document ''List of Blocks Available for Leasing'' included in the Final NOS Package. All of these blocks are shown on the following leasing maps and Official Protraction Diagrams (OPDs):

Outer Continental Shelf Leasing Maps—Texas Map Numbers 1 through 8

(These 16 Maps Sell for $2.00 Each.)

TX1 South Padre Island Area (revised November 1, 2000)
TX1A South Padre Island Area, East Addition (revised November 1, 2000)
TX2 North Padre Island Area (revised November 1, 2000)
TX2A North Padre Island Area, East Addition (revised November 1, 2000)
TX3 Mustang Island Area (revised November 1, 2000)
TX3A Mustang Island Area, East Addition (revised September 3, 2002)
TX4 Matagorda Island Area (revised November 1, 2000)
TX5 Brazos Area (revised November 1, 2000)
TX5B Brazos Area, South Addition (revised November 1, 2000)
TX6 Galveston Area (revised November 1, 2000)
TX6A Galveston Area, South Addition (revised November 1, 2000)
TX7 High Island Area (revised November 1, 2000)
TX7A High Island Area, East Addition (revised November 1, 2000)
TX7B High Island Area, South Addition (revised November 1, 2000)
TX7C High Island Area, East Addition, South Extension (revised November 1, 2000)
TX8 Sabine Pass Area (revised November 1, 2000)

Outer Continental Shelf Leasing Maps—Louisiana Map Numbers 1A, 1B, and 12

(These 3 maps sell for $2.00 each.)

LA1A West Cameron Area, West Addition (revised February 28, 2007)
LA1B West Cameron Area, South Addition (revised February 28, 2007)
LA12 Sabine Pass Area (revised July 1, 2011)

Outer Continental Shelf Official Protraction Diagrams

(These 7 Diagrams Sell for $2.00 Each.)

NG14–03 Corpus Christi (revised November 1, 2000)
NG14–06 Port Isabel (revised November 1, 2000)
NG15–01 East Breaks (revised November 1, 2000)
NG15–02 Garden Banks (revised February 28, 2007)
NG15–04 Alaminos Canyon (revised November 1, 2000)
NG15–05 Keathley Canyon (revised February 28, 2007)
NG15–08 Sigsbee Escarpment (revised February 28, 2007)

Please Note:

A CD–ROM (in ArcInfo and Acrobat (.pdf) format) containing all of the GOM leasing maps and OPDs, except for those not yet converted to digital format, is available from the BOEM Gulf of Mexico Region Public Information Office for a price of $15.00. These GOM leasing maps and OPDs are also available for free online in .pdf and .gra formats at *http://www.boem.gov/Oil-and-Gas-Energy-Program/Mapping-and-Data/Official-Protraction-Diagrams.aspx.*

For the current status of all WPA leasing maps and OPDs, please refer to 66 FR 28002 (May 21, 2001), 67 FR 60701 (September 26, 2002), 72 FR 27590 (May 16, 2007), and 76 FR 54787 (September 2, 2011). In addition, Supplemental Official OCS Block Diagrams (SOBDs) for blocks containing the U.S. 200 Nautical Mile Limit line and the U.S.-Mexico Maritime and Continental Shelf Boundary line are available. These SOBDs also are available from the BOEM Gulf of Mexico

Region Public Information Office. For additional information, or to order the above referenced maps or diagrams, please call the Mapping and Automation Section at (504) 736–5768.

All blocks being offered in the lease sale are shown on these leasing maps and OPDs. The available Federal acreage of each whole and partial block in this lease sale is shown in the document ''List of Blocks Available for Leasing'' included in the Final NOS Package. Some of these blocks may be partially leased or deferred, or transected by administrative lines such as the Federal/state jurisdictional line. A bid on a block must include all of the available Federal acreage of that block. Also, information on the unleased portions of such blocks is found in the document ''Western Planning Area, Lease Sale 233, August 28, 2013—Unleased Split Blocks and Available Unleased Acreage of Blocks with Aliquots and Irregular Portions under Lease or Deferred'' included in the Final NOS Package.

Areas Not Offered for Leasing

The following whole and partial blocks are not offered for lease in this sale:

Whole blocks and portions of blocks that lie within the boundaries of the Flower Garden Banks National Marine Sanctuary (Sanctuary) in the East and West Flower Garden Banks and Stetson Bank. The following list identifies all blocks affected by the Sanctuary boundaries:

High Island, East Addition, South Extension (Leasing Map TX7C)

Whole Block: A–398

Portions of Blocks: A–366*, A–367*, A–374*, A–375, A–383, A–384*, A–385*,

A–388, A–389, A–397*, A–399, A–401

*Leased

High Island, South Addition (Leasing Map TX7B)

Portions of Blocks: A–502, A–513

Garden Banks (OPD NG15–02)

Portions of Blocks: 134, 135

Whole blocks and portions of blocks that lie within the former Western Gap and that lie within 1.4 nautical miles north of the Continental Shelf Boundary between theUnited States and Mexico:

Keathley Canyon (OPD NG15–05)

Portions of Blocks: 978 through 980

Sigsbee Escarpment (OPD NG15–08)

Whole Blocks: 11, 57, 103, 148, 149, 194

Portions of Blocks: 12 through 14, 58 through 60, 104 through 106, 150

Blocks That lie Within the Former Western Gap and Within 1.4 Nautical Miles North of the Continental Shelf Boundary (1.4-Nautical Mile Buffer) Between the United States and Mexico

Please be advised that the 1.4-nautical mile buffer, which has not been offered in recent lease sales, was included in the lease sale area identified in the Proposed NOS for this sale, in the event that the Agreement (described below), entered into force prior to the issuance of this Final NOS. However, the Agreement has yet to enter into force; accordingly, the 1.4 nautical mile buffer is not available for leasing. A treaty provision prohibiting exploration and development remains in effect in the Western Gap area of the GOM after the United States and Mexico exchanged instruments of ratification in January 2001. The treaty states that, at the earliest, exploration or development within the 1.4-nautical mile buffer would occur after January 2011; however, on June 23, 2010, the United States and Mexico mutually agreed to extend this period for an additional three years. The treaty provision now remains in effect until January 17, 2014. The Agreement was signed by the United States and Mexico on February 20, 2012, and upon entry into force, the Agreement will supersede the prohibition on exploration or development within the 1.4-nautical mile buffer imposed by the continuing treaty provision. As the Agreement has not received final approval such that it may enter into force, this 1.4-nautical mile buffer is not available for leasing, and BOEM is not including these blocks in the former Western Gap and in the 1.4-nautical mile buffer in the lease sale area for this Final NOS.

Bids on Blocks Near the U.S.-Mexico Maritime and Continental Shelf Boundary

The following definitions apply to this section:

''Agreement'' refers to the transboundary agreement between the United Mexican States and the United States of America that addresses identification and unitization of transboundary hydrocarbon reservoirs, allocation of production, inspections, safety, and environmental protection. A copy of the Agreement can be found at *http://www.boem.gov/BOEM-Newsroom/Library/Boundaries-Mexico.aspx.*

''Boundary Area'' means an area comprised of any and all blocks in the WPA that are wholly or partially located within three statute miles of the Maritime and Continental Shelf Boundary with Mexico, as that Maritime Boundary is delimited in the November 24, 1970 Treaty to Resolve Pending Boundary Differences and Maintain the Rio Grande and Colorado River as the International Boundary; the May 4, 1978 Treaty on Maritime Boundaries between the United Mexican States and the United States of America; and the June 9, 2000 Treaty on the Continental Shelf between the Government of the United Mexican States and the Government of the United States of America.

The Agreement was signed on February 20, 2012, but has not yet entered into force. Bids submitted on any available block in the ''Boundary Area'' (as defined above) may be segregated from bids submitted on blocks outside the Boundary Area. Bids submitted on available blocks outside the Boundary Area will be opened on the date scheduled for the sale. Bids submitted on available blocks in the Boundary Area may not be opened on the date scheduled for the sale, but may be opened at a later date. Within 30 days after approval of the Agreement necessary to allow it to enter into force, or by February 28, 2014, whichever occurs first, the Secretary of the Interior (Secretary) will determine whether to open bids on available Boundary Area blocks or to return the bids unopened.

In the event the Secretary decides to open bids on available blocks in the Boundary Area, BOEM will notify such bidders at least 30 days prior to opening such bids and will describe the terms of the Agreement under which leases in the Boundary Area will be issued. Bidders on these blocks may withdraw their bids at any time after such notice up until 10:00 a.m. on the day before bid opening. If BOEM does not give notice within 30 days of approval of the Agreement as described above, or by February 28, 2014, whichever comes first, BOEM will return the bids unopened. This timing will allow potential bidders to make decisions regarding the next annual WPA lease sale (anticipated in August 2014), which also may offer blocks in this area. BOEM reserves the right to return these bids at any time. BOEM will not disclose which blocks received bids or the names of bidders on blocks in the Boundary Area unless and until the bids are opened.

BOEM currently anticipates that blocks in the Boundary Area that are not awarded as a result of WPA Sale 233 would be reoffered in the next WPA lease sale in 2014.

The following whole and partial blocks comprise the entire Boundary Area (not all of which may be available under WPA Sale 233):

Port Isabel Blocks—914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 945, 946,
947, 948, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 989, 990, 991, and
992
Alaminos Canyon Blocks—881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899*, 900*, 901*, 902*, 903*, 904*, 905, 906, 907, 908, 909, 910, 911, 912, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942*, 943*, 944*, 945*, 946, 947*, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 992, 993, 994, 995, 996, 997, 998, 999, 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, and 1009
Keathley Canyon Blocks—925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 969,
970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, and 981
Sigsbee Escarpment Blocks—11, 12, 13, 14, 15, 57, 58, 59, 60, 61, 103, 104, 105, 106,
148, 149, 150, and 194
South Padre Island Blocks—1154, 1163, 1164, 1165, and 1166
South Padre Island, East Addition Blocks—1155, 1156, 1157, 1158, 1159, 1160, 1161,
1162, A 78, A 79, A 80, A 81, A 82, A 83, A 84, A 85, A 86, A 87, A 89, and A 90
*Leased

II. Statutes and Regulations

Each lease is issued pursuant to OCSLA, implementing regulations promulgated pursuant thereto, and other applicable statutes and regulations in existence upon the effective date of the lease, as well as those applicable statutes enacted and regulations promulgated thereafter, except to the extent that the after-enacted statutes and regulations explicitly conflict with an express provision of the lease. Amendments to existing statutes and regulations, including but not limited to OCSLA, as well as the enactment of new statutes and promulgation of new regulations, that do not explicitly conflict with an express provision of the lease, will apply to leases issued as a result of this sale. Moreover, the lessee expressly bears the risk that such new statutes and regulations (i.e., those that do not explicitly conflict with an express provision of the lease) may increase or decrease the lessee's obligation under the lease.

III. Lease Terms and Economic Conditions

Lease Terms

OCS Lease Form

BOEM will use Form BOEM–2005 (October 2011) to convey leases resulting from this sale. This lease form may be viewed on the BOEM Web site at *http://www.boem.gov/About-BOEM/Procurement-Business-Opportunities/BOEM–OCS-Operation-Forms/BOEM–2005.aspx.* The lease form will be amended to conform with the specific terms, conditions, and stipulations applicable to the individual lease.

Initial Periods

Initial periods are summarized in the following table:

Water depth in meters	Initial period
0 to < 400	Standard initial period is 5 years; the lessee may earn an additional 3 years (i.e., for an 8-year extended initial period) if a well is spudded targeting hydrocarbons below 25,000 feet True Vertical Depth Subsea (TVD SS) during the first 5 years of the lease
400 to < 800	Standard initial period is 5 years; the lessee will earn an additional 3 years (i.e., for an 8-year extended initial period) if a well is spudded during the first 5 years of the lease
800 to < 1,600	Standard initial period is 7 years; the lessee will earn an additional 3 years (i.e., for a 10-year extended initial period) if a well is spudded during the first 7 years of the lease
1,600 +	10 years

(1) The standard initial period for a lease in water depths less than 400 meters issued as a result of this sale is 5 years. If the lessee spuds a well targeting hydrocarbons below 25,000 feet TVD SS within the first 5 years of the lease, then the lessee may earn an additional 3 years, resulting in an 8-year extended initial period. The lessee will earn the 8-year extended initial period when the well is drilled to a target below 25,000 feet TVD SS, or the lessee may earn the 8-year extended initial period in cases where the well targets, but does not reach, a depth below 25,000 feet TVD SS due to mechanical or safety reasons, where sufficient evidence is provided.

In order to earn the 8-year extended initial period, the lessee is required to submit to the Bureau of Safety and Environmental Enforcement (BSEE) GOM Regional Supervisor for Production and Development, within 30 days after completion of the drilling operation, a letter providing the well number, spud date, information demonstrating a target below 25,000 feet TVD SS and whether that target was reached, and if applicable, any safety, mechanical, or other problems encountered that prevented the well from reaching a depth below 25,000 feet TVD SS. The BSEE Gulf of Mexico Regional Supervisor for Production and Development must concur in writing that the conditions have been met for the lessee to earn the 8-year extended initial period. The BSEE Gulf of Mexico Regional Supervisor for Production and Development will provide a written response within 30 days of receipt of the lessee's letter.

A lessee that has earned the 8-year extended initial period by spudding a well with a hydrocarbon target below 25,000 feet TVD SS during the first 5 years of the lease, confirmed by BSEE, will not be eligible for a suspension for that same period under the regulations at 30 CFR 250.175 because the lease is not at risk of expiring.

(2) The standard initial period for a lease in water depths of 400 to less than 800 meters issued as a result of this sale is 5 years. The lessee will earn an additional 3 years, resulting in an 8-year extended initial period, if the lessee spuds a well within the first 5 years of the lease.

In order to earn the 8-year extended initial period, the lessee is required to submit to the appropriate BSEE District Manager, within 30 days after spudding a well, a letter providing the well number and spud date, and requesting concurrence that the lessee has earned the 8-year extended initial period. The BSEE District Manager will review the request and make a written determination within 30 days of receipt of the request. The BSEE District Manager must concur in writing that the conditions have been met by the lessee to earn the 8-year extended initial period.

(3) The standard initial period for a lease in water depths of 800 to less than 1,600 meters issued as a result of this sale will be 7 years. The lessee will earn an additional 3 years, resulting in a 10-

year extended initial period, if the lessee spuds a well within the first 7 years of the lease.

In order to earn the 10-year extended initial period, the lessee is required to submit to the appropriate BSEE District Manager, within 30 days after spudding a well, a letter providing the well number and spud date, and requesting concurrence that the lessee has earned the 10-year extended initial period. The BSEE District Manager will review the request and make a determination. A written response will be sent to the lessee documenting the BSEE District Manager's decision within 30 days of receipt of the request. The BSEE District Manager must concur in writing that the conditions have been met by the lessee to earn the 10-year extended initial period.

(4) The standard initial period for a lease in water depths of 1,600 meters or greater issued as a result of this sale will be 10 years.

Economic Conditions

Minimum Bonus Bid Amounts

- $25.00 per acre or fraction thereof for blocks in water depths less than 400 meters
- $100.00 per acre or fraction thereof for blocks in water depths of 400 meters or deeper

BOEM will not accept a bonus bid unless it provides for a cash bonus in the amount equal to, or exceeding, the specified minimum bid of $25.00 per acre or fraction thereof for blocks in water depths less than 400 meters, and $100.00 per acre or fraction thereof for blocks in water depths of 400 meters or deeper.

Rental Rates

Annual rental rates are summarized in the following table:

RENTAL RATES PER ACRE OR FRACTION THEREOF

Water depth in meters	Years 1–5	Years 6, 7, & 8 +
0 to < 200	$7.00	$14.00, $21.00, & $28.00
200 to < 400	$11.00	$22.00, $33.00, & $44.00
400 +	$11.00	$16.00

Escalating Rental Rates for Leases With an 8-Year Extended Initial Period in Water Depths Less Than 400 Meters

Any lessee with a lease in water depths less than 400 meters that earns an 8-year extended initial period will pay an escalating rental rate as shown above. The rental rates after the fifth year for blocks in less than 400 meters water depth will become fixed and no longer escalate if another well is spudded targeting hydrocarbons below 25,000 feet TVD SS after the fifth year of the lease, and BSEE concurs that such a well has been spudded. In this case, the rental rate will become fixed at the rental rate in effect during the lease year in which the additional well was spudded.

Royalty Rate

- 18.75 percent

Minimum Royalty Rate

- $7.00 per acre or fraction thereof per year for blocks in water depths less than 200 meters
- $11.00 per acre or fraction thereof per year for blocks in water depths of 200 meters or deeper

Royalty Suspension Provisions

Leases with royalty suspension volumes (RSVs) are authorized under existing BOEM regulations at 30 CFR part 560. Royalty relief or reduction is implemented by BSEE through regulations at 30 CFR part 203.

Ultra-deep Gas Royalty Suspensions

A lease issued as a result of this sale may be eligible for RSV incentives for ultra-deep wells pursuant to 30 CFR part 203, implementing requirements of the Energy Policy Act of 2005. Certain wells on leases in less than 400 meters water depth completed to a drilling depth of 20,000 feet TVD SS or deeper may receive an RSV of 35 billion cubic feet of natural gas. This RSV incentive is conditioned upon applicable price thresholds.

IV. Lease Stipulations

One or more of the following proposed stipulations may be applied to leases issued as a result of this sale. The detailed text of these stipulations is contained in the ''Lease Stipulations'' section of the Final NOS Package.

(1) Topographic Features
(2) Military Areas
(3) Law of the Sea Convention Royalty Payment
(4) Protected Species
(5) Agreement between the United States of America and the United Mexican States
Concerning Transboundary Hydrocarbon Reservoirs in the Gulf of Mexico

V. Information to Lessees

The Information to Lessees (ITL) clauses provide detailed information on certain issues pertaining to this oil and gas lease sale. The detailed text of these ITL clauses is contained in the ''Information to Lessees'' section of the Final NOS Package:

(1) Navigation Safety
(2) Ordnance Disposal Areas
(3) Existing and Proposed Artificial Reefs/Rigs-to-Reefs
(4) Lightering Zones
(5) Indicated Hydrocarbons List
(6) Military Areas
(7) Safety Zones for Certain Production Facilities
(8) Bureau of Safety and Environmental Enforcement (BSEE) Inspection and Enforcement of Certain Coast Guard Regulations
(9) Potential Sand Dredging Activities
(10) Notice of Arrival on the Outer Continental Shelf
(11) Bids on Blocks near U.S.-Mexico Maritime and Continental Shelf Boundary

VI. Maps

The maps pertaining to this lease sale may be found on the BOEM Web site at *http://www.boem.gov/sale-233/.* The following maps also are included in the Final NOS Package:

Lease Terms and Economic Conditions Map

The lease terms and economic conditions and the blocks to which these terms and conditions apply are shown on the map ''Final, Western Planning Area, Lease Sale 233, August 2013, Lease Terms and Economic Conditions'' included in the Final NOS Package.

Stipulations and Deferred Blocks Map

The blocks to which one or more lease stipulations may apply are shown on the map ''Final, Western Planning Area, Lease Sale 233, August 2013, Stipulations and Deferred Blocks Map'' included in the Final NOS Package.

VII. Bidding Instructions

Instructions on how to submit a bid, secure payment of the advance bonus bid deposit (if applicable), and what

information must be included with the bid are as follows:

Bid Form

For each block bid upon, a separate sealed bid shall be submitted in a sealed envelope (as described below) and must include the following:

- total amount of the bid in whole dollars only;
- sale number;
- sale date;
- each bidder's exact name;
- each bidder's proportionate interest, stated as a percentage, using a maximum of five decimal places (e.g., 33.33333 percent);
- typed name and title, and signature of each bidder's authorized officer;
- each bidder's GOM company number;
- map name and number or Official Protraction Diagram (OPD) name and number;
- block number; and
- statement acknowledging that the bidder(s) understand that this bid legally binds the bidder(s) to comply with all applicable regulations, including payment of one-fifth of the bonus bid amount on all apparent high bids.

The information required on the bid(s) will be specified in the document ''Bid Form'' contained in the Final NOS Package. A blank bid form is provided therein for convenience and may be copied and completed with the necessary information described above.

Bid Envelope

Each bid must be submitted in a separate sealed envelope labeled as follows:

- ''Sealed Bid for Oil and Gas Lease Sale 233, not to be opened until 9:00 a.m. Wednesday, August 28, 2013'' or if the bid is on a block in the U.S.-Mexico Maritime Boundary Area, ''Sealed Bid for Oil and Gas Lease Sale 233 U.S.-Mexico Maritime Boundary Bid, not to be opened until at least 30 days following the approval of the Transboundary Agreement allowing it to enter into force, or February 28, 2014, whichever occurs first;''
- map name and number or OPD name and number;
- block number for block bid upon; and
- the exact name and qualification number of the submitting bidder only.

The Final NOS Package includes a sample bid envelope for reference.

Mailed Bids

If bids are mailed, please address the envelope containing the sealed bid envelope(s) as follows: Attention: Leasing and Financial Responsibility Section, BOEM Gulf of Mexico Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Contains Sealed Bids for WPA Oil and Gas Lease Sale 233, Please Deliver to Ms. Cindy Thibodeaux or Ms. Kasey Couture, 2nd Floor, Immediately.

Please Note:

Bidders mailing bid(s) are advised to call Ms. Cindy Thibodeaux at (504) 736–2809, or Ms. Kasey Couture at (504) 736–2909, immediately after putting their bid(s) in the mail. If BOEM receives bids later than the Bid Submission Deadline, the BOEM Regional Director (RD) will return those bids unopened to bidders. Please see ''Section XI. Delay of Sale'' regarding BOEM's discretion to extend the Bid Submission Deadline in the case of an unexpected event (e.g., flooding or travel restrictions) and how bidders can obtain more information on such extensions.

Advance Bonus Bid Deposit Guarantee

Bidders that are not currently an OCS oil and gas lease record title holder or designated operator or those that ever have defaulted on a one-fifth bonus bid deposit, by Electronic Funds Transfer (EFT) or otherwise, must guarantee (secure) the payment of the one-fifth bonus bid deposit prior to bid submission using one of the following four methods:

- provide a third-party guarantee;
- amend an areawide development bond via bond rider;
- provide a letter of credit; or
- provide a lump sum payment in advance via EFT.

For more information on EFT procedures, see Section X of this document entitled ''The Lease Sale.''

Affirmative Action

BOEM requests that, prior to bidding, the bidder file Equal Opportunity Affirmative Action Representation Form BOEM–2032 (October 2011) and Equal Opportunity Compliance Report Certification Form BOEM–2033 (October 2011) in the BOEM Gulf of Mexico Region Adjudication Section. This certification is required by 41 CFR part 60 and Executive Order No. 11246, issued September 24, 1965, as amended by Executive Order No. 11375, issued October 13, 1967. Please note that both forms are required to be on file for the bidder(s) in the GOM Region Adjudication Section prior to the execution of any lease contract.

Geophysical Data and Information Statement (GDIS)

Every bidder submitting a bid on a block in WPA Sale 233, or participating as a joint bidder in such a bid, must submit at the time of bid submission a GDIS in a separate and sealed envelope, identifying all proprietary data; reprocessed speculative data, and/or any Controlled Source Electromagnetic surveys, Amplitude Versus Offset, Gravity, or Magnetic data; or other information used as part of the decision to bid or participate in a bid on the block. The bidder and joint bidder must also include a live trace map (e.g., .pdf and ArcGIS shape file) for each survey that they identify in the GDIS illustrating the actual areal extent of the proprietary geophysical data in the survey (see the ''Example of Preferred Format'' in the Final NOS Package for additional information).

A bidder must submit the GDIS even if its joint bidder or bidders on a specific block also have submitted a GDIS. Any speculative data that has been reprocessed externally or ''in-house'' is considered proprietary due to the proprietary processing and is no longer considered to be speculative. The GDIS should clearly state who did the reprocessing (e.g., external company name or ''in-house''). In addition, the GDIS should clearly identify the data type (e.g., 2–D, 3–D, or 4–D; pre-stack or post-stack; and time or depth), areal extent (i.e., number of line miles for 2–D or number of blocks for 3–D), and migration algorithm (e.g., Kirchhoff Migration, Wave Equation Migration, Reverse Migration, Reverse Time Migration) of the data, velocity models used, and other requested metadata. The statement also must include the name, phone number, and full address of a contact person and an alternate who are both knowledgeable about the information and data listed and who are available for 30 days postsale, the processing company, date processing was completed, owner of the original data set (i.e., who initially acquired the data), and original data survey name and permit number. Seismic survey information also should include the computer storage size, to the nearest megabyte, of each seismic data and velocity volume used to evaluate the lease block in question. This will be used in estimating the reproduction costs for each data set. BOEM reserves the right to query about alternate data sets, to quality check, and to compare the listed and alternative data sets to determine which data set most closely meets the needs of the fair market value determination process.

The GDIS also must include entries for all blocks bid upon that did not use proprietary or reprocessed pre- or post-stack geophysical data and information as part of the decision to bid or to participate as a joint bidder in the bid. The GDIS must be submitted even if no proprietary geophysical data and

information were used in bid preparation for the block.

Pursuant to 30 CFR 551.12 and 30 CFR 556.32, as a condition of the sale, the BOEM Gulf of Mexico RD requests that all bidders and joint bidders submit the proprietary data identified on their GDIS within 30 days after the lease sale (unless you are notified after the lease sale that BOEM has withdrawn the request). This request only pertains to proprietary data that is not commercially available. Commercially available data is not required to be submitted to BOEM, and reimbursement will not be provided if such data is submitted by a bidder. The BOEM Gulf of Mexico RD will notify bidders and joint bidders of any withdrawal of the request, for all or some of the proprietary data identified on the GDIS, within 15 days of the lease sale. Pursuant to 30 CFR part 551 and as a condition of this sale, all bidders required to submit data must ensure that the data is received by BOEM no later than the thirtieth day following the lease sale, or the next business day if the submission deadline falls on a weekend or Federal holiday. The data must be submitted to BOEM at the following address: Bureau of Ocean Energy Management, Resource Studies, MS 881A, 1201 Elmwood Park Blvd., New Orleans, LA 70123–2304.

BOEM recommends that bidders mark the submission's external envelope as ''Deliver Immediately to DASPU.'' BOEM also recommends that the data be submitted in an internal envelope, or otherwise marked, with the following designation ''Proprietary Geophysical Data Submitted Pursuant to Lease Sale 233 and used during evaluation of Block.''

In the event a person supplies any type of data to BOEM, that person must meet the following requirements to qualify for reimbursement:

(1) Persons must be registered with the System for Award Management (SAM), formerly known as the Central Contractor Registration (CCR). Your CCR username will not work in SAM. A new SAM User Account is needed to register or update your entity's records. The Web site for registering is *https://www.sam.gov.*

(2) Persons must be enrolled in the Department of Treasury's Internet Payment Platform (IPP) for electronic invoicing. The person must enroll in the IPP at *https://www.ipp.gov/.* Access then will be granted to use IPP for submitting requests for payment. When a request for payment is submitted, it must include the assigned Purchase Order Number on the request.

(3) Persons must have a current On-line Representations and Certifications Application at *https://www.sam.gov.*

Please Note:

The GDIS Information Table must be submitted digitally, preferably as an Excel spreadsheet, on a CD or DVD along with the seismic data map(s). If you have any questions, please contact Ms. Dee Smith at (504) 736–2706, or Mr. John Johnson at (504) 736–2455. Bidders should refer to Section X of this document, ''The Lease Sale: Acceptance, Rejection, or Return of Bids,'' regarding a bidder's failure to comply with the requirements of the Final NOS, including any failure to submit information as required in the Final NOS or Final NOS Package.

Telephone Numbers/Addresses of Bidders

BOEM requests that bidders provide this information in the suggested format prior to or at the time of bid submission. This form must not be enclosed inside the sealed bid envelope.

Additional Documentation

BOEM may require bidders to submit other documents in accordance with 30 CFR 556.46.

VIII. Bidding Rules and Restrictions

Restricted Joint Bidders

BOEM published in the **Federal Register** on May 10, 2013, a List of Restricted Joint Bidders at 78 FR 27430, which applies to this lease sale. Please refer to joint bidding provisions at 30 CFR 556.41 for additional restrictions.

Authorized Signatures

All bidders must execute all documents in conformance with signatory authorizations on file in the BOEM qualification records.

Unlawful Combination or Intimidation

BOEM warns bidders against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

Bid Withdrawal

Bids may be withdrawn only by written request delivered to BOEM prior to the Bid Submission Deadline. The withdrawal request must be on company letterhead and must contain the bidder's name, its company number, the map name/number, and the block number(s) of the bid(s) to be withdrawn. The request must be in conformance with signatory authorizations on file in the BOEM Gulf of Mexico Region Adjudication Office. Signatories must be authorized to bind their respective legal business entities (e.g., a corporation, partnership, or LLC); they also must have an incumbency certificate, and/or specific power of attorney setting forth express authority to act on the business entity's behalf for purposes of bidding and lease execution under OCSLA. The name and title of the signatory must be typed under the signature block on the withdrawal letter. Upon the BOEM Gulf of Mexico RD's, or his designee's, approval of such requests, he will indicate his approval by signing and dating the withdrawal request.

Bid Rounding

The bonus bid amount must be stated in whole dollars. If the acreage of a block contains a decimal figure, then prior to calculating the minimum bonus bid, bidders must round up to the next whole acre. The appropriate minimum rate per acre is then applied to the whole (rounded up) acreage. If this calculation results in a fractional dollar amount, bidders must round up to the next whole dollar amount. The bonus bid amount must be greater than or equal to the minimum bonus bid. Minimum bonus bid calculations, including all rounding, for all blocks will be shown in the document ''List of Blocks Available for Leasing'' included in the Final NOS Package.

IX. Forms

The Final NOS Package includes instructions, samples, and/or the preferred format for the following items. BOEM strongly encourages bidders to use these formats; should bidders use another format, they are responsible for including all the information specified for each item in the Final NOS Package.

(1) Bid Form
(2) Sample Completed Bid
(3) Sample Bid Envelope
(4) Sample Bid Mailing Envelope
(5) Telephone Numbers/Addresses of Bidders Form
(6) GDIS Form
(7) GDIS Envelope Form

X. The Lease Sale

Bid Opening and Reading

Sealed bids received in response to the Final NOS will be opened at the place, date, and hour specified in the Final NOS. The opening of the bids is for the sole purpose of publicly announcing and recording the bids received; no bids will be accepted or rejected at that time.

Bonus Bid Deposit for Apparent High Bids

Each bidder submitting an apparent high bid must submit a bonus bid deposit to the U.S. Department of the Interior's Office of Natural Resources Revenue (ONRR) equal to one-fifth of the bonus bid amount for each such bid. A copy of the notification of the high

bidder's one-fifth bonus liability may be obtained at the EFT Area outside the Bid Reading Room on the day of the bid opening, or it may be obtained on the BOEM Web site at *http://www.boem.gov/Sale-233/* under the heading ''Notification of EFT ⅕ Bonus Liability.'' All payments must be deposited electronically into an interest-bearing account in the U.S. Treasury by 11:00 a.m. Eastern Time the day following the bid reading (no exceptions). Account information is provided in the ''Instructions for Making Electronic Funds Transfer Bonus Payments'' found on the BOEM Web site identified above.

BOEM requires bidders to use EFT procedures for payment of one-fifth bonus bid deposits for WPA Sale 233, following the detailed instructions contained on the ONRR Payment Information Web page at *http://www.onrr.gov/FM/PayInfo.htm.* Acceptance of a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

Withdrawal of Blocks

The United States reserves the right to withdraw any block from this lease sale prior to issuance of a written acceptance of a bid for the block.

Acceptance, Rejection, or Return of Bids

The United States reserves the right to reject any and all bids. No bid will be accepted, and no lease for any block will be awarded to any bidder, unless the bidder has complied with all requirements of the Final NOS, including those set forth in the documents contained in the Final NOS Package and applicable regulations, the bid is the highest valid bid, and the amount of the bid has been determined to be adequate by the authorized officer. Any bid submitted that does not conform to the requirements of the Final NOS and Final NOS Package, OCSLA, or other applicable statute or regulation may be rejected and returned to the bidder. The U.S. Department of Justice and the Federal Trade Commission will review the results of the lease sale for anti-trust issues prior to the acceptance of bids and issuance of leases. To ensure that the Government receives a fair return for the conveyance of leases from this sale, high bids will be evaluated in accordance with BOEM's bid adequacy procedures. A copy of current procedures, ''Modifications to the Bid Adequacy Procedures'' at 64 FR 37560 on July 12, 1999, can be obtained from the BOEM Gulf of Mexico Region Public Information Office, or via the BOEM Gulf of Mexico Region Web site at *http://www.boem.gov/Oil-and-Gas-Energy-Program/Leasing/Regional-Leasing/Gulf-of-Mexico-Region/Bid-Adequacy-Procedures.aspx.*

Lease Award

BOEM requires each bidder awarded a lease to: (1) execute all copies of the lease (Form BOEM–2005 (October 2011), as amended); (2) pay by EFT the balance of the bonus bid amount and the first year's rental for each lease issued in accordance with the requirements of 30 CFR 218.155 and 556.47(f); and (3) satisfy the bonding requirements of 30 CFR part 556, subpart I, as amended. ONRR requests that only one transaction be used for payment of the four-fifths bonus bid amount and the first year's rental.

XI. Delay of Sale

The BOEM Gulf of Mexico RD has the discretion to change any date, time, and/or location specified in the Final NOS Package in case of an event that the BOEM Gulf of Mexico RD deems may interfere with the carrying out of a fair and proper lease sale process. Such events could include, but are not limited to, natural disasters (e.g., earthquakes, hurricanes, and floods), wars, riots, acts of terrorism, fires, strikes, civil disorder, or other events of a similar nature. In case of such events, bidders should call (504) 736–0557, or access the BOEM Web site at *http://www.boem.gov* for information regarding any changes.

Dated: July 17, 2013.

Tommy P. Beaudreau,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2013–18175 Filed 7–26–13; 8:45 am]

BILLING CODE 4310–MR–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Committee on Rules of Practice and Procedure

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Bankruptcy Procedure.

ACTION: Notice of Open Meeting.

SUMMARY: The Advisory Committee on Rules of Bankruptcy Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: September 24—25, 2013.

TIME: 8:30 a.m. to 5:00 p.m.

ADDRESSES: University of St. Thomas School of Law, 1000 LaSalle Avenue, Minneapolis, MN 55403.

FOR FURTHER INFORMATION CONTACT: Jonathan C. Rose, Secretary and Chief Rules Officer, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: July 24, 2013.

Jonathan C. Rose,

Secretary and Chief Rules Officer.

[FR Doc. 2013–18172 Filed 7–26–13; 8:45 am]

BILLING CODE 2210–55–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Modification of Amended Consent Decree Under the Clean Air Act

On July 22, 2013, the Department of Justice lodged a proposed Joint Stipulation to Modify Section XXI of the Amended Consent Decree with the United States District Court for the Eastern District of Wisconsin in the lawsuit entitled *United States and Michigan Department of Environmental Quality, Plaintiffs, and Clean Wisconsin, Sierra Club, and Citizens' Utility Board, Intervenors,* v. *Wisconsin Electric Power Company,* Civil Action No. 03–c–0371.

The terms of the Amended Consent Decree that are subject to the proposed modification are those set forth in Section XXI of the Amended Consent Decree. Generally, those provisions preclude any transfer of an Ownership Interest in any Unit covered by the Decree unless the transferee is first made a defendant to the Decree and jointly and severally liable with Wisconsin Electric for all the requirements of the Decree that may be applicable to the transferred or purchased Ownership Interests. The proposed modification would provide that such a requirement need not apply when certain conditions obtain, such as when the transferred interest is minor and Defendant Wisconsin Electric remains liable for the Decree's terms.

The publication of this notice opens a period for public comment on the Joint Stipulation to Modify Section XXI of the Amended Consent Decree. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States et al.* v. *Wisconsin Electric Power Company,* D.J. Ref. No. 90–5–2–1–07493. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By e-mail	pubcomment-ees.enrd@usdoj.gov.
By mail	Assistant Attorney General U.S. DOJ—ENRD P.O. Box 7611 Washington, DC 20044–7611.

During the public comment period, the Joint Stipulation to Modify Section XXI of the Amended Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the Joint Stipulation to Modify Section XXI of the Amended Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $58.25 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the exhibit pages, the cost is $4.25.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2013–18045 Filed 7–26–13; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Modification to Settlement Agreement Under the Clean Water Act

On July 23, 2013, the Department of Justice lodged a proposed Third Modification to the Settlement Agreement and Final Order (''Third Modification'') in *United States and State of California ex rel. California Regional Water Quality Control Board, Los Angeles Region* v. *City of Los Angeles,* Civil Action No. 01–191–RSWL, with the United States District Court for the Central District of California, Western Division. The United States and the State's action is consolidated with *Santa Monica Baykeeper* v. *The City of Los Angeles,* Civil Action No. 98–9039–RSWL.

The Proposed Third Modification adds several potential Supplemental Environmental Projects (''SEPs'') for the City to implement in order to meet the Settlement Agreement's requirement to spend $8.5 million on SEPs.

The publication of this notice opens a period for public comment on the Third Modification. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and State of California ex rel. California Regional Water Quality Control Board, Los Angeles Region* v. *City of Los Angeles,* D.J. Ref. No. 90–5–1–1–809/1. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By e-mail	pubcomment-ees.enrd@usdoj.gov.
By mail	Assistant Attorney General U.S. DOJ—ENRD P.O. Box 7611 Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the Third Modification upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $ 3.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2013–18046 Filed 7–26–13; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993 — tranSMART Foundation

Notice is hereby given that, on July 3, 2013, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), tranSMART Foundation (''tranSMART'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the name and principal place of business of the standards development organization is tranSMART Foundation, Wakefield, MA. The nature and scope of tranSMART's standards development activities are to enable effective sharing, integration, standardization, and analysis of heterogeneous data from collaborative translational research by mobilizing the tranSMART open-source and open-data community.

In furtherance of that purpose, tranSMART may engage in some or all of the following activities: (a) Establish and sustain tranSMART as the preferred data sharing and analytics platform for translational biomedical research; (b) link academic, non-profit and corporate research communities for collaborative research facilitated by tranSMART; (c) align and grow a vibrant developer network around the scientific goals of the tranSMART community; (d) reduce barriers to entry through use of advanced technologies and an active marketplace; and (e) undertake such other activities as may from time to time be appropriate to further the purposes and achieve the goals set forth above.

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2013–18071 Filed 7–26–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; National Emergency Grant Assistance—Application and Reporting Procedures

ACTION: Notice.

SUMMARY: On July 31, 2013, the Department of Labor (DOL) will submit the Employment and Training Administration (ETA) sponsored information collection request (ICR) revision titled, ''National Emergency Grant Assistance—Application and Reporting Procedures,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

DATES: Submit comments on or before August 30, 2013.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201305–1205–004* (this link will only become active on August 1, 2013) or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR contains policies and application and reporting procedures for State and local entities, to enable them to access funds for National Emergency Grant (NEG) programs. A NEG is a discretionary grant intended to complement the resources and service capacity at the State and local area levels, by providing supplemental funding for workforce development and employment services and other adjustment assistance for dislocated workers and other eligible individuals as defined in Workforce Investment Act sections 101, 134, and 173 and in the Trade Act, as amended by the Trade and Globalization Assistance Act of 2009.

This ICR has been classified as a revision, because a number of changes are being proposed. Specifically, the previous submission inadvertently included a Trade Adjustment Assistance Certification Report. The report is not a form generated by the NEG program. In addition, changes are being proposed for several forms covered by the ICR. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 29, 2013 (78 FR 32277).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205–0439. The current approval is scheduled to expire on July 31, 2013; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements would only take effect upon OMB approval.

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section on or before August 30, 2013. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0439. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–ETA.

Title of Collection: National Emergency Grant Assistance—Application and Reporting Procedures.

OMB Control Number: 1205–0439.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 150.

Total Estimated Number of Responses: 1,485.

Total Estimated Annual Burden Hours: 1,006.

Total Estimated Annual Other Costs Burden: $0.

Dated: July 23, 2013.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2013–18112 Filed 7–26–13; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Coal Mine Dust Sampling Devices

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Mine Safety and Health Administration (MSHA) sponsored information collection request (ICR) titled, ''Coal Mine Dust Sampling Devices,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

DATES: Submit comments on or before August 28, 2013.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201304–1219–003* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–MSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: Continuous Personal Dust Monitors (CPDMs) determine the concentration of respirable dust in coal mines. CPDMs must be designed and constructed for coal miners to wear and operate without impeding their ability to perform their

work safely and effectively. CPDMs must also be durable to perform reliably in normal working conditions of coal mines. Paperwork requirements imposed on applicants are related to the application process and CPDM testing procedures. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on April 30, 2013 (78 FR 25308).

This information collection is subject to the PRA, as it is contained in a rule of general applicability. *See* 5 CFR 1320.3(c)(4)(i). A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1219–0147.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on September 30, 2013. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. It should also be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review.

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1219–0147. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–MSHA.

Title of Collection: Coal Mine Dust Sampling Devices.

OMB Control Number: 1219–0147.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 1.

Total Estimated Number of Responses: 1.

Total Estimated Annual Burden Hours: 41.

Total Estimated Annual Other Costs Burden: $291,139.

Dated: July 23, 2013.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2013–18031 Filed 7–26–13; 8:45 am]

BILLING CODE 4510–43–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 request for a new OMB control number for the ''Eating and Health Supplement to the American Time Use Survey.'' 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 September 27, 2013.

ADDRESSES: Send comments to Amelia Vogel, 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: Amelia Vogel, BLS Clearance Officer, at 202–691–7628 (this is not a toll free number). (See Addresses section.)

SUPPLEMENTARY INFORMATION:

I. Background

The American Time Use Survey (ATUS) is the Nation's first federally administered, continuous survey on time use in the United States. It measures, for example, time spent with children, working, sleeping, or doing leisure activities. In the United States, several existing Federal surveys collect income and wage data for individuals and families, and analysts often use such measures of material prosperity as proxies for quality of life. Time-use data substantially augment these quality-of-life measures. The data also can be used in conjunction with wage data to evaluate the contribution of non-market work to national economies. This enables comparisons of production between nations that have different mixes of market and non-market activities.

The ATUS is used to develop nationally representative estimates of how people spend their time. This is done by collecting a time diary about the activities survey respondents did over a 24-hour period ''yesterday,'' from 4 a.m. on the day before the interview until 4 a.m. on the day of the interview. In the one-time interview, respondents also report who was with them during the activities, where they were, how long each activity lasted, and if they were paid. All of this information has numerous practical applications for sociologists, economists, educators, government policymakers, businesspersons, health researchers, and others.

Time use data allows researchers to analyze the choices people make in how they spend their time, along with the time and income constraints they face. The data from the proposed Eating and Health module supplement can be used for research on the inter-relations and inter-associations of time use patterns and body mass index (BMI), food assistance participation, grocery shopping, and meal preparation. These

data enhance the understanding of peoples' overall well-being.

The Eating and Health module supplement includes questions about peoples' eating and drinking behaviors, food assistance participation, grocery and meal shopping, food preparation, and food sufficiency. It also includes questions on general health and physical exercise. Information collected in the supplement will be published as a public use data set to facilitate research on numerous topics, such as: The association between eating patterns, physical activity, and BMI; time-use patterns of food assistance program participants and low-income nonparticipants; and how time-use varies by health status. Sponsored by the Economic Research Service (ERS) of the United States Department of Agriculture (USDA), the supplement is asked of respondents immediately upon their completion of the American Time Use Survey (ATUS).

The Eating and Health supplement supports the mission of the Bureau of Labor Statistics by providing relevant information on economic and social issues, specifically the association between time-use patterns and eating and physical activity behavior and health. The data from the Eating and Health Module Supplement also closely support the mission of its sponsor, ERS, to improve the nation's nutrition and health. The supplement surveys individuals aged 15 and up from a nationally representative sample of approximately 2,190 sample households each month.

II. Current Action

Office of Management and Budget clearance for a new OMB control number is being sought for the Eating and Health Supplement to the American Time Use Survey. This supplement was previously collected as part of the ATUS (OMB control number 1220–0175). The BLS is requesting a new OMB control number in order to have greater flexibility in managing this episodic information collection without needing to revisit the more permanent aspects of the ATUS.

There have been few efforts to collect data on time-use and how it relates to BMI, food assistance participation, grocery shopping, and meal preparation. The ATUS first ran Eating and Health Modules in 2006–08. The 2006–08 Eating and Health Modules produced useful data that have been used in a variety of research products that inform policy and programs on eating and other behaviors.

Fielding the Eating and Health Module Supplement in calendar years 2014 and 2015 will allow researchers to monitor changes in Americans' time use patterns along with changes in Americans' eating activities, BMI values, and food assistance participation. Additionally, the proposed supplement includes several important questions that were not asked in 2006–08, including questions about soft drink consumption, grocery and meal shopping, meal preparation, food affordability, and physical exercise. Running the proposed 2014–15 Eating and Health Module Supplement will add significant information beyond what was collected in 2006–08 and provide an additional dimension to analyses of the time-use data.

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: New collection (Request for a new OMB control Number).

Agency: Bureau of Labor Statistics.

Title: Eating and Health Supplement to the American Time Use Survey.

OMB Number: 1220–NEW.

Affected Public: Individuals or households.

Total Respondents: 12,600.

Frequency: One time.

Total Responses: 12,600.

Average Time per Response: 5 minutes.

Estimated Total Burden Hours: 1,050 hours.

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 23rd day of July 2013.

Kimberley D. Hill,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 2013–18060 Filed 7–26–13; 8:45 am]

BILLING CODE 4510–24–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting Notice

DATE AND TIME: The Legal Services Corporation's Institutional Advancement Committee will meet telephonically on August 6, 2013. The meeting will commence at 4:00 p.m., EDT, and will continue until the conclusion of the Committee's agenda.

LOCATION: John N. Erlenborn Conference Room, Legal Services Corporation Headquarters, 3333 K Street NW., Washington, DC 20007.

PUBLIC OBSERVATION: Members of the public who are unable to attend in person but wish to listen to the public proceedings may do so by following the telephone call-in directions provided below.

CALL–IN DIRECTIONS FOR OPEN SESSIONS:

- Call toll-free number: 1–866–451–4981;
- When prompted, enter the following numeric pass code: 5907707348
- When connected to the call, please immediately ''MUTE'' your telephone.

Members of the public are asked to keep their telephones muted to eliminate background noises. To avoid disrupting the meeting, please refrain from placing the call on hold if doing so will trigger recorded music or other sound. From time to time, the presiding Chair may solicit comments from the public.

STATUS OF MEETING: Upon a vote of the Board of Directors, the meeting may be closed to the public to discuss prospective members for an LSC 40th anniversary honorary committee.

A verbatim transcript will be made of the closed session meeting of the Institutional Advancement Committee. The transcript of any portion of the closed session falling within the relevant provision of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6) will not be available for public inspection. A copy of the General Counsel's Certification that, in his opinion, the closing is authorized by law will be available upon request.

Matters to be Considered

Open

1. Approval of agenda
2. Approval of minutes of the Committee's open session meeting of June 27, 2013
3. Discussion of gift sponsorship levels
4. Discussion of 40th anniversary calendar
5. Discussion of fundraising initiatives
6. Public comment
7. Consider and act on other business

Closed

8. Approval of minutes of the Committee's closed session meeting of June 27, 2013
9. Discussion of prospective members for an LSC 40th anniversary honorary committee
10. Consider and act on adjournment of meeting

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

ACCESSIBILITY: LSC complies with the Americans with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals needing other accommodations due to disability in order to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov,* at least 2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: July 25, 2013.

Atitaya C. Rok,

Staff Attorney.

[FR Doc. 2013–18296 Filed 7–25–13; 4:15 pm]

BILLING CODE 7050–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2013–039]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request use of two forms to obtain authorization from customers of the Office of Government Information Services (OGIS) to make inquiries on their behalf and to release information and records related to their Freedom of Information Act/Privacy Act requests/appeals. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before September 27, 2013 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (ISSD), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–713–7409; or electronically mailed to *tamee.fechhelm@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694, or fax number 301–713–7409.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA'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 collection of information on respondents, including the use of information technology; and (e) whether small businesses are affected by this collection. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Freedom of Information Act (FOIA) Request for Assistance and Consent.

OMB number: 3095–0068.

Agency form number: NA Forms 10003 and 10004.

Type of review: Regular.

Affected public: Individuals or households, Business or other for-profit, Not-for-profit institutions, and Federal Government.

Estimated number of respondents: 600.

Estimated time per response: 1 minute.

Frequency of response: On occasion.

Estimated total annual burden hours: 10 hours.

Abstract: In order to fulfill its government-wide statutory mission, OGIS provides varying types of assistance to its customers, which requires communicating with government departments and agencies regarding the customer's FOIA/Privacy Act request/appeal. Handling requests for OGIS assistance must conform to the legal requirements of the Freedom of Information Act (FOIA) and the Privacy Act of 1974. Authority for the requirements set forth in these forms is also contained in 5 U.S.C. 552a(b). OGIS will use the information submitted in the proposed forms to provide the requested assistance. Without the information submitted in these forms, OGIS would be unable to fulfill its mission.

Dated: July 15, 2013.

Michael L. Wash,

Executive for Information Services/CIO.

[FR Doc. 2013–18150 Filed 7–26–13; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Reinstatement, With Change, of a Previously Approved Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is related to the Federal Credit Union (FCU) Bylaws and is being published to obtain comments from the public. The bylaws address a broad range of matters concerning: an FCU's organization and governance; the FCU's relationship to members; and the procedures and rules an FCU follows.

DATES: Comments will be accepted until September 27, 2013.

ADDRESSES: Interested parties are invited to submit written comments to

the NCUA and OMB Contacts listed below:

NCUA Contact: Tracy Crews, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–837–2861, Email: *OCIOPRA@ncua.gov.*

OMB Contact: Office of Management and Budget, ATTN: Desk Officer for the National Credit Union Administration, Office of Information and Regulatory Affairs, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information, a copy of the information collection request, or a copy of submitted comments should be directed to Tracy Crews, NCUA, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444. Requests for additional information about the FCU Bylaws should be directed to Susan Ryan, NCUA Consumer Access Analyst, at the same address, in the Office of Consumer Protection, Division of Consumer Access, (703) 518- 1150, *DCAMail@NCUA.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract and request for comments

The FCU Act requires the NCUA Board to prepare bylaws for FCUs. 12 U.S.C. 1758. After consideration of public comment, the NCUA Board adopted the FCU Bylaws and incorporated them into NCUA's regulations at 12 CFR 701.2, and Appendix A to part 701, in 2007. Unless a federal credit union adopted its bylaws before November 30, 2007, it must adopt the 2007 bylaws. FCUs use the information they collect and maintain pursuant to their bylaws in their operations and to provide services to members. NCUA uses the information both to regulate the safety and soundness of FCUs and protect the National Credit Union Share Insurance Fund.

NCUA is issuing this notice and request for comment on the reinstatement and amendment of the previously approved information collection PRA number related to the FCU Bylaws, 3133–0052. Staff has incorporated into this collection other previously expired or combined information collections also related to the bylaws, including 3133–0057 and 3133–0081. The amount of burden hours is decreasing as a result of technology and the continuing trend of annual decreases in the number of FCUs.

NCUA staff reviewed each of the articles of the FCU Bylaws to identify all current information collection requirements. As a preliminary matter, those persons choosing to organize a new FCU must comply with certain information collection requirements upon starting the FCU and first adopting these bylaws. Over the past three years, organizers have established an average of approximately two new FCUs each year. We estimate each new FCU must spend approximately 20 hours to initially comply with the bylaws' information collection requirements (ICR), for a total annual collection of 40 hours.

For current FCUs, it has been a usual and customary business practice, since their initial charter dates, to collect and maintain any information as specified the bylaws. NCUA staff also reviewed each Article of the FCU Bylaws to estimate current annual burden hours for FCUs attached to each ICR, and we have listed these estimates below in the Data section.

NCUA does not believe that FCUs will incur any additional labor costs as a result of the bylaw requirements since these are in accordance with the FCUs' usual and customary business practices. The FCU bylaws address integral parts of an FCU's operations as member-owned, not-for-profit financial cooperatives. Since an FCU could not operate as federally chartered and insured credit union without complying with these collections, there is no additional labor cost burden.

The NCUA requests that you send your comments on this collection to the location listed in the addresses section. Your comments should address: (a) The necessity of the information collection for the proper performance of NCUA, including whether the information will have practical utility; (b) the accuracy of our estimate of the burden (hours and cost) of the collection of information, including the validity of any methodology and assumptions used; (c) ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents such as through the use of automated collection techniques or other forms of information technology. It is NCUA's policy to make all comments available to the public for review.

II. Data

Title: Federal Credit Union (FCU) Bylaws, 12 CFR 701.2, and App. A to Part 701

OMB Number: 3133–0052.

Form Number: N/A

Type of Review: reinstatement, with change.

Description: FCUs use the information they collect and maintain pursuant to their bylaws in their operations and to provide services to members. NCUA uses the information both to regulate the safety and soundness of FCUs and protect the National Credit Union Share Insurance Fund.

Respondents: All FCUs and, for Art. 2, estimated number of new FCU members (per year).

Estimated No. of Respondents/Recordkeepers: 4,220 FCUs and 1,461,335 new members = 1,465,555.

Frequency of Response: Recordkeeping, Reporting and On occasion .

Estimated Total Annual Hours Requested: 458,477.75.

Estimated Total Annual Cost: N/A.

Specifically, NCUA Staff identified the following articles as containing ICRs with the following number of respondents and the estimated annual burden in hours, as follows:

ICRs related to FCU Bylaws, specifically for newly chartered FCUs:

Respondents/record-keepers: 2 per year.

Estimated annual burden: 20 hours.

Total annual hours: 40 hours.

ICRs related to Bylaws for All FCUs:

Article II. Qualifications for Membership

ICR: Membership applications.

Respondents: 1,461,335 new members of FCUs.

Estimated annual burden: 15 minutes per application.

Total annual hours: 365,334.

ICR: Membership denial.

Respondents/record-keepers: 1055 [¼ of all FCUs deny one member per year].

Estimated annual burden: 15 minutes per denial.

Total annual hours: 263.75.

Article IV. Meetings of Members

ICR: Notices related to member meetings.

Respondents/record-keepers: All FCUs (4,220).

Estimated annual burden: 1 hour.

Total annual hours: 4,220.

Article V. Elections

ICR: Collecting and maintaining information for FCU elections.

Respondents/record-keepers: All FCUs (4,220).

Estimated annual burden: 8 hours.

Total annual hours: 33,760.

* Please note Article V, section 6, contains an ICR on the report of officials. This ICR is addressed in another NCUA PRA submission, 3133–0004.

Article VI. Board of Directors

ICR: Board meeting notices.

Respondents/record-keepers: All FCUs (4,220).

Estimated annual burden: 1 hour.

Total annual hours: 4,220.

Article XVI. General

ICR: FCU recordkeeping specified in sections 5 and 6. This includes, for example, the time that it takes each FCU time to prepare and maintain the minutes of its board meetings, annual meeting, and committees meetings. NCUA's estimate also includes retention of the FCU's certificate of incorporation, bylaws, and any records of bylaw amendments, which occur infrequently.

Respondents/record-keepers: All FCUs (4,220).

Estimated annual burden: 12 hours (1 hour per month).

Total annual hours: 50,640.

By the National Credit Union Administration Board on July 23, 2013.

Mary Rupp,

Secretary of the Board.

[FR Doc. 2013–18085 Filed 7–26–13; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Reinstatement, With Change, of a Previously Approved Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public. Section 701.36 of the NCUA Rules and Regulations regulates ownership of fixed assets by federal credit unions. This rule ensures that federal credit unions do not undertake undue risk related to fixed assets. Specifically, section 701.36 limits the aggregate amount of fixed assets, defines the duration for which property can be held before it must be occupied or disposed and, defines prohibited transactions. This information collection enables NCUA to evaluate waiver requests of these limitations.

DATES: Comments will be accepted until September 27, 2013.

ADDRESSES: Interested parties are invited to submit written comments to the NCUA Contact and the OMB Reviewer listed below:

NCUA Contact: Tracy Crews, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–837–2861, Email: *OCIOPRA@ncua.gov.*

OMB Contact: Office of Management and Budget, ATTN: Desk Officer for the National Credit Union Administration, Office of Information and Regulatory Affairs, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information, a copy of the information collection request, or a copy of submitted comments should be directed to Tracy Crews at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION:

I. Abstract and Request for Comments

NCUA is reinstating and amending the collection for 3133–0040. 12 CFR 701.36 requires that a federal credit union with $1 million or more in assets obtain the approval of the NCUA before investing in fixed assets in excess of 5% of shares and retained earnings. This section also requires that a federal credit union prepare a definitive plan for full use of premises acquired for future expansion if it has not fully occupied the premises within one year of acquisition, and that a federal credit union that has not at least partially occupied such premises within three years, six years for unimproved real property, obtain NCUA approval to continue without partial occupation. This section also requires a federal credit union that does not dispose of abandoned property within 5 years of abandonment obtain NCUA approval to continue to hold the property. Federal credit unions must also obtain NCUA approval prior to investing in property from a prohibited party. The rule requires federal credit unions to submit documentation in support any of the above requests. This information collection requirement is submitted for approval. The intent of the regulation and associated information collection is to prevent, or at least curb, excess investments in fixed assets and the related costs and expenses that may be beyond the financial capability of the credit union. Statistics indicate a correlation between high fixed asset investments and difficulty in achieving positive earnings. Further, the Federal Credit Union Act does not permit federal credit unions to own real estate for purposes other than for providing financial services to members. NCUA uses the information collection to evaluate the impact a waiver approval may have on the safety and soundness of a federal credit union. The increase in burden hours is associated with the termination of the Regulatory Flexibility Program. This program exempted federal credit unions in certain standing from the 5 percent limitation on fixed assets. The end of the program has resulted in an increase in waiver requests. The NCUA requests that you send your comments on this collection to the location listed in the addresses section. Your comments should address: (a) The necessity of the information collection for the proper performance of NCUA, including whether the information will have practical utility; (b) the accuracy of our estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents such as through the use of automated collection techniques or other forms of information technology. It is NCUA's policy to make all comments available to the public for review.

II. Data

Title: Federal Credit Union Ownership of Fixed Assets.

OMB Number: 3133–0040.

Form Number: None.

Type of Review: Reinstatement, with change, of a previously approved collection.

Description: The rule limits the aggregate amount of fixed assets, defines the duration for which property can be held before it must be occupied or disposed and, defines prohibited transactions. Credit unions may apply for a waiver to these limitations, which is the purpose of this data collection.

Respondents: Federal credit unions.

Estimated No. of Respondents/Recordkeepers: 193.

Estimated Burden Hours per Response: 14.7 hours.

Frequency of Response: On occasion.

Estimated Total Annual Burden Hours: 2,830 hours.

Estimated Total Annual Cost: $82,213.80

By the National Credit Union Administration Board on July 23, 2013.

Mary Rupp,

Secretary of the Board.

[FR Doc. 2013–18086 Filed 7–26–13; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Reinstatement, With Change, of a Previously Approved Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public. Section 721.1(h) of the NCUA Rules and Regulations regulates purchases by federally insured credit unions of indirect vehicle loans serviced by third-parties. 721.1(h) limits the aggregate amount of these loans serviced by any single third-party to a percentage of the credit union's net worth. This rule ensures that federally insured credit unions do not undertake undue risk with these purchases. This data collection enables NCUA to evaluate waiver requests of these limits.

DATES: Comments must be received on or before September 27, 2013.

ADDRESSES: Interested parties are invited to submit written comments to the NCUA Contact and the OMB Reviewer listed below:

NCUA Contact: Tracy Crews, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–837–2861, Email: *OCIOPRA@ncua.gov.*

OMB Contact: Office of Management and Budget, ATTN: Desk Officer for the National Credit Union Administration, Office of Information and Regulatory Affairs, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information, a copy of the information collection request, or a copy of submitted comments should be directed to Tracy Crews at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION:

I. Abstract and request for comments

NCUA is reinstating, with change, the collection for 3133–0171. NCUA Rules and Regulations § 701.21(h) establishes limits at federally-insured credit unions on the purchase of interests in indirect vehicle loans serviced by any particular third-party servicer. These indirect, outsourced programs create numerous risks to the credit union, and the rule ensures that these risks will not lead to significant negative impacts on the credit union's net worth and losses to the National Credit Union Share Insurance Fund. The rule allows a credit union to apply for a waiver of the limits, but to obtain a waiver the credit union must demonstrate to the NCUA that it understands the risks and has taken appropriate measures to monitor and protect itself against the risks. Because the waiver requests consist primarily of qualitative data, the NCUA call report system cannot be used for this collection.

The NCUA requests that you send your comments on this collection to the location listed in the addresses section. Your comments should address: (a) The necessity of the information collection for the proper performance of NCUA, including whether the information will have practical utility; (b) the accuracy of our estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents such as through the use of automated collection techniques or other forms of information technology. It is NCUA's policy to make all comments available to the public for review.

II. Data

Title: Third Party Servicing of Indirect Vehicle Loans, 12 CFR § 701.21(h)

OMB Number: 3133–0171.

Form Number: None.

Type of Review: Reinstatement, with change, of a previously approved collection.

Description: The rule limits the aggregate amount of indirect vehicle loans that federally insured credit unions loans may have serviced by any single third-party to a percentage of the credit union's net worth. Credit unions may apply for a waiver to this rule, which is the purpose of this data collection.

Respondents: Federally insured credit unions.

Estimated No. of Respondents/ Recordkeepers: 15.

Estimated Burden Hours Per Response: 50 hours.

Frequency of Response: Upon waiver request.

Estimated Total Annual Burden Hours: 750 hours.

Estimated Total Annual Cost: 750 hours x $31.56/hr, or $23,670.

By the National Credit Union Administration Board on July 23, 2013.

Mary Rupp,

Secretary of the Board.

[FR Doc. 2013–18087 Filed 7–26–13; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Reinstatement, Without Change, of a Previously Approved Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public. On March 22, 2010, the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and National Credit Union Administration (the agencies) published in the **Federal Register** a joint final notice (75 FR 13656) implementing the guidance effective on May 21, 2010. The Guidance reiterates the process that institutions should follow to appropriately identify, measure, monitor, and control their funding and liquidity risk. In particular, the Guidance re-emphasizes the importance of cash flow projections, diversified funding sources, stress testing, a cushion of liquid assets, and a formal well-developed contingency funding plan (CFP) as primary tools for measuring and managing liquidity risk. The agencies expect all financial institutions [1] to manage liquidity risk using processes and systems that are commensurate with the institution's complexity, risk profile, and scope of operations. Liquidity risk management processes and plans should be well documented and available for supervisory review. Failure to maintain an adequate liquidity risk management process is considered an unsafe and unsound practice.

[1] This interagency guidance uses the term ''financial institutions'' or ''institutions'' to include banks, saving associations, credit unions, affiliated holding companies, state and federally chartered U.S. branches and agencies of foreign banks, and Edge and agreement corporations.

DATES: Comments will be accepted until September 27, 2013.

ADDRESSES: Interested parties are invited to submit written comments to the NCUA Contact and the OMB Reviewer listed below:

NCUA Contact: Tracy Crews, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–837–2861, Email: *OCIOPRA@ncua.gov.*

OMB Contact: Office of Management and Budget, ATTN: Desk Officer for the National Credit Union Administration, Office of Information and Regulatory Affairs, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information, a copy of the information collection request, or a copy of submitted comments should be directed to Tracy Crews at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION:

I. Abstract and Request for Comments

NCUA is amending/reinstating the collection for 3133–0180. The agencies have identified two sections of the Guidance that fall under the definition of an information collection. Section 14 states that institutions should consider liquidity costs, benefits, and risks in strategic planning and budgeting processes. Section 20 requires that liquidity risk reports provide aggregate information with sufficient supporting detail to enable management to assess the sensitivity of the institution to changes in market conditions, its own financial performance, and other important risk factors.

Section 14 of the Guidance states that institutions should consider liquidity costs, benefits, and risks in strategic planning and budgeting processes. Significant business activities should be evaluated for liquidity risk exposure as well as profitability. More complex and sophisticated institutions should incorporate liquidity costs, benefits, and risks in the internal product pricing, performance measurement, and new product approval process for all material business lines, products and activities. Incorporating the cost of liquidity into these functions should align the risk-taking incentives of individual business lines with the liquidity risk exposure their activities create for the institution as a whole. The quantification and attribution of liquidity risks should be explicit and transparent at the line management level and should include consideration of how liquidity would be affected under stressed conditions.

Section 20 of the Guidance would require that liquidity risk reports provide aggregate information with sufficient supporting detail to enable management to assess the sensitivity of the institution to changes in market conditions, its own financial performance, and other important risk factors. Institutions should also report on the use of and availability of government support, such as lending and guarantee programs, and implications on liquidity positions, particularly since these programs are generally temporary or reserved as a source for contingent funding.

The documentation required by the Guidance is maintained by each institution; therefore, it is not collected or published by the National Credit Union Administration. These recordkeeping requirements are documented on occasion. Credit union examiners verify compliance with this recordkeeping requirement during examinations. The recordkeeping information gathered during the examination process informs examiners about the safety and soundness of the financial institution's funding and liquidity risk management practices.

The NCUA requests that you send your comments on this collection to the location listed in the addresses section. Your comments should address: (a) The necessity of the information collection for the proper performance of NCUA, including whether the information will have practical utility; (b) the accuracy of our estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents such as through the use of automated collection techniques or other forms of information technology. It is NCUA's policy to make all comments available to the public for review.

II. Data

Title: Interagency Policy Statement on Funding and Liquidity Risk Management.

OMB Number: 3133–0180.

Form Number: None.

Type of Review: Reinstatement, without change, of a previously approved collection.

Description: The agencies have identified two sections of the policy statement that fall under the definition of an information collection. Section 14 states that institutions should consider liquidity costs, benefits, and risks in strategic planning and budgeting processes. Section 20 requires that liquidity risk reports provide aggregate information with sufficient supporting detail to enable management to assess the sensitivity of the institution to changes in market conditions, its own financial performance, and other important risk factors.

Respondents: Federally Insured Credit Unions.

Estimated No. of Respondents/Record keepers: 6,753 total (4 large credit unions ($10 to $100 billion in assets), 769 mid-sized institutions ($250 million to $10 billion), and 5,980 (less than $250 billion)).

Estimated Burden Hours per Response:

- *Section 14:* 240 hours per large respondent, 80 hours per mid-size respondent, and 20 hours per small respondent.
- *Section 20:* 2 hours per month.

Estimated Total Annual Burden Hours: 344,152 hours.

Estimated Total Annual Cost: Not applicable—usual and customary business

By the National Credit Union Administration Board on July 23, 2013.

Mary Rupp,

Secretary of the Board.

[FR Doc. 2013–18088 Filed 7–26–13; 8:45 am]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0103]

Compensatory and Alternative Regulatory Measures for Nuclear Power Plant Fire Protection (CARMEN–FIRE)

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability; request for public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) requests public comment on the proposed draft NUREG/CR–7135, ''Compensatory and Alternative Regulatory Measures for Nuclear Power Plant Fire Protection (CARMEN–FIRE), Draft Report for Comment.''

DATES: Comments on this document should be submitted by August 30, 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. To

ensure efficient and complete comment resolution, comments should include section, page, and line numbers of the document to which the comment applies, if possible.

ADDRESSES: You may submit comments 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–2013–0103. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: 3WFN 06–A44, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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: Felix Gonzalez, Fire Research Branch, Division of Risk Analysis, Office of Nuclear Regulatory Research, telephone 301–251–7596, email: *Felix.Gonzalez@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2013–0103 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 any of the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0103.

• *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.* Draft NUREG/CR–7135 is available in ADAMS under Accession No. ML13191A864.

• *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–2013–0103 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 will post all comment submissions at *http://www.regulations.gov* as well as enter 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

Employing appropriate compensatory measures, on a short-term basis, is an integral part of NRC-approved fire protection programs. However, compensatory measures are not expected to be in place for an extended period of time. The NRC staff expects that the corrective action(s) will be completed, and reliance on the compensatory measure eliminated, at the first available opportunity, typically the first refueling outage. Thus, a compensatory measure that is in place beyond the next refueling outage (typically 18—24 months) is considered to be a *''long-term compensatory measure.''*

This report is intended to serve as a reference guide for agency staff responsible for evaluating the acceptability of alternative interim compensatory measures provided to offset the degradation in fire safety caused by impaired fire protection features at nuclear power plants. The report documents the history of compensatory measures and details the regulatory framework established by NRC to ensure they are appropriately implemented and maintained. This report also explores technologies that did not exist when the current plants were licensed such as video-based detection, temporary penetration seals and portable suppression systems which under certain conditions may provide an effective alternative to traditional measures specified in a plant's approved fire protection program.

The NRC is seeking public comment in order to receive feedback from the widest range of interested parties and to ensure that all information relevant to the information contained within this document is correct and accurate. We are specifically interested in receiving feedback on the following questions:

1. Do licensees differentiate between compensatory measures related to impaired structures, systems, and components (SSC) used for Reactor Post-Fire Safe-Shutdown Protection vs. impaired classical Fire Protection (FP) systems? If so, please provide information on the differences between the two.

2. Are there any other examples of Alternative Compensatory Measures (e.g. other new technology) not already discussed in the NUREG/CR that should be considered? If so, please provide information on these alternative compensatory measures.

3. Are there any issues, concerns or better suggestions regarding the examples or technologies discussed in the NUREG/CR? If so, please provide your suggestions.

This document is issued for comment only and is not intended for interim use. The NRC will review public comments received on the documents, incorporate suggested changes as necessary, and make the final NUREG-report available to the public.

Dated at Rockville, Maryland, this 16th day of July 2013.

For the Nuclear Regulatory Commission.

Mark Henry Salley,

Chief, Fire Research Branch, Division of Risk Analysis, Office of Nuclear Regulatory Research.

[FR Doc. 2013–18168 Filed 7–26–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos.: 72–1004, 72–40, 50–269, 50–270, 50–287; and NRC–2013–0135]

Duke Energy Carolinas, LLC; Oconee Nuclear Station Units 1, 2, and 3; Independent Spent Fuel Storage Installation

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The NRC is issuing an exemption in response to a request submitted by Duke Energy Carolinas, LLC., on August 13, 2012, for the Oconee Nuclear Station, Independent Spent Fuel Storage Installation (ISFSI).

ADDRESSES: Please refer to Docket ID NRC–2013–0135 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0135. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may 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: Jennifer Davis, Senior Project Manager, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–287–9173; email: *BJennifer.Davis@nrc.gov.*

SUPPLEMENTARY INFORMATION:

1.0 Background

Duke Energy Carolinas, LLC (the applicant) is the holder of Facility Operating License Nos. DPR–38, DPR–47, and DPR–55, which authorize operation of the Oconee Nuclear Station, Units 1, 2, and 3 in Oconee County, South Carolina, pursuant to part 50 of Title 10, *Code of Federal Regulations* (10 CFR). The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the NRC now or hereafter in effect.

Consistent with 10 CFR part 72, Subpart K, a general license is issued for the storage of spent fuel in an ISFSI at power reactor sites to persons authorized to possess or operate nuclear power reactors under 10 CFR part 50. The applicant is authorized to operate a nuclear power reactor under 10 CFR part 50, and holds a 10 CFR part 72 general license for storage of spent fuel at the Oconee Nuclear Station ISFSI. Under the terms of the general license, the Transnuclear, Inc. (TN) Standardized NUHOMS® dry cask storage system Certificate of Compliance (CoC) No. 1004, Amendment No. 9 is used for cask loading at the Oconee Nuclear Station ISFSI.

2.0 Request/Action

The applicant is requesting an exemption from the requirement that specifies that the fuel approved for use in these casks is ''zircaloy clad,'' which refers to Zircaloy-2 or Zircaloy-4 cladding. This requirement precludes loading Babcock and Wilcox (B&W) Mark B11 and Mark B11A fuel assemblies, which have M5[1] cladding, in TN Standardized NUHOMS® 24PHB DSCs. If approved, the applicant's exemption request would allow the loading of these fuel assemblies in these casks at Oconee until December 31, 2014.

The TN Standardized NUHOMS® certificate of compliance (CoC No. 1004) specifies the requirements, conditions, and operating limits for the TN Standardized NUHOMS® dry cask storage system in Appendix A, Technical Specifications (TS). The TS in Table 1–1i, ''PWR Fuel Specification for Fuel to be Stored in the Standardized NUHOMS®-24PHB [dry shielded canister] DSC'' specify that the fuel cladding shall be ''zircaloy-clad fuel with no known or suspected gross cladding breaches.'' Zircaloy is a type of zirconium alloy that includes both Zircaloy-2 and Zircaloy-4 cladding, but does not include M5. M5 is a different type of zirconium alloy, which does not contain any tin, as Zircaloy does, but which does contain some niobium. Therefore, M5 fuel cannot be loaded into NUHOMS®-24PHB DSCs because it is not a ''zircaloy-clad'' fuel.

In a letter dated August 13, 2012, (ADAMS Accession No. ML12227A686), the applicant requested an exemption from certain parts of the following requirements to allow storage of M5 (zirconium alloy) clad fuel in the TN 24PHB dry storage canisters (DSCs) at the Oconee Nuclear Station ISFSI:

- 10 CFR 72.212(a)(2), which states ''[t]his general license is limited to storage of spent fuel in casks approved under the provisions of this part.''
- 10 CFR 72.212(b)(5), which states that, ''each cask used by the general licensee conforms to the terms, conditions, and specifications of a CoC or an amended CoC listed in § 72.214.''
- 10 CFR 72.212(b)(11), which states in part that ''[t]he licensee shall comply with the terms, conditions, and specifications of the CoC and, for those casks to which the licensee has applied the changes of an amended CoC, the terms, conditions, and specifications of the amended CoC….'' and
- 10 CFR 72.214, which lists the approved spent fuel storage casks.

Upon review, the NRC staff added the following requirements to the exemption for the proposed action pursuant to its authority under 10 CFR 72.7:

- 10 CFR 72.212(b)(3), which states that ''[t]he general licensee must [e]nsure that each cask used by the general licensee conforms to the terms, conditions, and specifications of a CoC or an amended CoC listed in § 72.214.''
- In addition, the applicant requested an exemption from certain requirements of 10 CFR 72.212(b)(5) allowing storage of M5 cladding associated with B&W 15x15 Mark B11 and Mark B11A fuel. The NRC has evaluated the applicant's request and determined that only an exemption from § 72.212(b)(5)(i) is warranted. The applicant does not require an exemption from §§ 72.212(b)(5)(ii) or (iii) for the proposed action. Therefore, the NRC interprets the applicant's request for an exemption from certain requirements of 10 CFR 72.212(b)(5) to be a request for an exemption only from § 72.212(b)(5)(i), which requires that ''[t]he cask, once loaded with spent fuel or once the changes authorized by an amended CoC have been applied, will conform to the terms, conditions, and

[1] M5 is AREVA's proprietary variant of Zr Nb which was approved by the NRC for PWR reactors (Reference 3 of exemption request).

specifications of a CoC or an amended CoC listed in § 72.214.''

The applicant is also requesting, an exemption from the TS for the NUHOMS® system to permit the loading of M5 fuel into these canisters. Specifically, the applicant is requesting an exemption from Technical Specification 12.1, ''Fuel Specifications,'' and the associated tables listed below, which specify requirements for the spent fuel assemblies to be loaded in the 24PHB DSCs certified under CoC No. 1004, Amendment No. 9.

- Table 1–1i, ''PWR Fuel Specification for Fuel to be Stored in the Standardized NUHOMS®-24PHB DSC.''
- Table 1–2n, ''PWR Fuel Qualification Table for Zone 1 with 0.7 kW per Assembly, Fuel With or Without BPRAs [Burnable Poison Rod Assembly], for the NUHOMS®-24PHB DSC.''
- Table 1–2o, ''PWR Fuel Qualification Table for Zone 2 with 1.0 kW per Assembly, Fuel With or Without BPRAs, for the NUHOMS®-24PHB DSC,'' and
- Table 1–2p, PWR Fuel Qualification Table for Zone 3 with 1.3 kW per Assembly, Fuel With or Without BPRAs, for the NUHOMS®-24PHB DSC.''

3.0 *Discussion*

Pursuant to 10 CFR 72.7, the Commission may, upon application by any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations of 10 CFR part 72 as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

Authorized by Law

This exemption would allow the licensee to load B&W Mark B11 and Mark B11A fuel assemblies with M5 cladding in 24PHB DSCs at the Oconee Nuclear Station ISFSI. The provisions in 10 CFR part 72 from which the applicant is requesting exemption require the licensee to comply with the terms, conditions, and specifications of the CoC for the approved cask model that they use.

The Commission issued 10 CFR 72.7 under the authority granted to it under Section 133 of the Nuclear Waste Policy Act of 1982, as amended, 42 USC 10153. Section 72.7 allows the NRC to grant exemptions from the requirements of 10 CFR part 72. Granting the licensee's proposed exemption provides adequate protection to public health and safety, and the environment. As explained below, the proposed exemption will not endanger life or property, or the common defense and security, and is otherwise in the public interest. Therefore, the exemption is authorized by law.

Will Not Endanger Life or Property or the Common Defense and Security

The provisions in section 72.212(a)(2) specifically state that the general licensee is limited to storage of spent fuel in casks approved under 10 CFR part 72. Sections 72.212(b)(3), 72.212(b)(5), 72.212(b)(5)(1) and 72.212(b)(11) limit the general licensee to storage of spent fuel in cask models approved under the provisions of 10 CFR part 72 (which are listed in 10 CFR 72.214) and to require general licensees to comply with the terms and conditions of the CoC for the approved cask model(s) that they use. This exemption would allow the licensee to load B&W Mark B11 and Mark B11A fuel assemblies with M5 cladding in 24PHB DSCs at the Oconee Nuclear Station ISFSI.

The TN Standardized NUHOMS® dry cask storage system CoC provides requirements, conditions and operating limits in Attachment A, Technical Specifications. The TS in Table 1–1i, ''PWR Fuel Specification for Fuel to be Stored in the Standardized NUHOMS®-24PHB DSC'' specify that the fuel cladding shall be ''zircaloy-clad fuel with no known or suspected gross cladding breaches.'' As described above, Zircaloy includes both Zircaloy-2 and Zircaloy-4 cladding, but does not include M5-clad fuels. This exemption only considers the loading of B&W 15x15 Mark B11 and Mark B11A spent fuel assemblies at the Oconee Nuclear Station ISFSI pending disposition of Amendment No. 13 to CoC No. 1004. Amendment No. 13 TS permit storage of ''zirconium alloy'' clad spent fuel assemblies in the 24PHB DSC, which would include both the ''zircaloy clad'' assemblies permitted under previous amendments, as well as the M5 clad assemblies at issue in this exemption request.

Approval of the exemption request will allow Oconee to effectively manage its spent fuel inventory to meet decay heat zoning requirements throughout its scheduled loading campaigns. Oconee's ability to load M5 clad fuel in the next scheduled loading campaign will mean that older ''zircaloy clad'' fuel assemblies will be available for future loadings. Amendment No. 13 is currently under review by the NRC staff. The proposed Technical Specifications, as submitted by TN (ADAMS Accession No. ML110450541), do not specify any cladding material requirements in Table 1–1i, but do reference Tables 1–2n, 1–2o, and 1–2p. The notes for Tables 1–2n, 1–2o, and 1–2p, have been changed from, ''. . .Zircaloy clad uranium-oxide rods. . . .'' to ''Zirconium-alloy clad uranium-oxide rods . . . .''

Amendment No. 13 to CoC No. 1004 Review

By application dated February 9, 2011 (ADAMS Accession Nos. ML110460525 (letter), and ML110460541 (package)), TN submitted an amendment request to amend CoC No. 1004 for the Standardized NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel, under the provisions of 10 CFR part 72, Subparts K and L. The application has been supplemented as follows:

— July 22, 2011, Responses to the Request for Supplemental Information (ADAMS Accession Nos. ML11217A043 (non-proprietary) and ML11217A045 (proprietary)),

— March 19, 2012, Response to the First Request for Additional Information (ADAMS Accession No. ML120960488 (package)), and

— September 24, 2012, Response to the Second Request for Additional Information (ADAMS Accession No. ML122700151 (package)).

Along with other changes, TN requested a change to the Technical Specifications for the 24PHB DSC to allow non-Zircaloy cladding as approved contents for the 24PHB DSC. In considering this exemption request, NRC staff was able to draw upon review work already underway in its consideration of Amendment No. 13 for CoC 1004.[2] As discussed below, the NRC staff finds that allowing non-Zircaloy cladding, specifically; allowing M5 zirconium alloy clad B&W Mark B11 and Mark B11A fuel to be loaded in the 24PHB DSC, is acceptable. The proposed cask loading of fuel with zirconium alloy cladding was analyzed using NUREG–1536, ''Standard Review Plan for Spent Fuel Dry Storage Systems at a General License Facility, Rev. 1'' for material properties, for structural performance, and performance under thermal stresses, including potential elongation from decay heat and irradiation. In addition, the NRC staff notes that M5 cladding materials have improved ductility and fracture toughness properties relative to Zircaloy-4 cladding material. The zirconium alloy cladding was also analyzed with respect to maintenance of

[2] While the Amendment No. 13 application includes the addition of zirconium alloy clad fuels as authorized contents in the 24PHB DSC, the application also includes many other changes not at issue in this exemption.

subcriticality. In all cases, the NRC staff found the zirconium alloy acceptable for storage in the 24PHB DSC.

Review of the Requested Exemption

Background: The NUHOMS® system provides for the horizontal dry storage of canisterized spent fuel assemblies in a concrete horizontal storage module (HSM). The cask storage system components for NUHOMS® consist of a reinforced concrete HSM and a DSC vessel with an internal basket assembly that holds the spent fuel assemblies. The HSM is a low profile, reinforced concrete structure designed to withstand all normal condition loads, as well as abnormal condition loads created by natural phenomena such as earthquakes and tornados. It is also designed to withstand design basis accident conditions.

Request/Action: The applicant has requested an exemption from the ''zircaloy clad'' requirement in the TS of Amendment No. 9 for CoC 1004. This requirement refers to Zircaloy-2 or Zircaloy-4 cladding, and thus precludes the storage of B&W Mark B11 and Mark B11A fuel assemblies, which have M5 cladding.

The applicant has requested an exemption from the current TS to permit the loading of B&W Mark B11 and Mark B11A M5 clad fuel assemblies. This is consistent with another request currently before the Commission for Amendment No. 13 to CoC 1004, which would permit the loading of such fuel in the 24PHB DSC.

Safety Evaluation: The NRC has previously considered the acceptability of different cladding types for spent fuel storage. This is reflected in Interim Staff Guidance (ISG) 11, Revision 3, ''Cladding Considerations for the Transportation and Storage of Spent Fuel,'' (ADAMS Accession No. ML033230335), which provides technical review guidance to materials reviewers, and specifies the criteria that should be met.

Currently, other NUHOMS® storage systems included in CoC No. 1004 permit storage of fuel designs with cladding other than Zircaloy. These include the NUHOMS® 24PTH and 32PTH1 DSCs. NRC staff also notes that Amendment No. 13 to the TN Standardized NUHOMS® System is currently under review. In that amendment the ''zircaloy clad'' fuel description has been replaced with ''zirconium alloy'' specifically to permit the loading of M5™ and other non-Zircaloy zirconium alloy clad fuel into the 24PHB DSC.

Structural Review for the Requested Exemption: In Amendment No.13, which is being reviewed by the NRC staff, TN requests the ''Zircaloy clad'' fuel description be replaced with ''zirconium alloy.'' Information about the materials and structural properties of M5 clad fuel from the Amendment No. 13 application was used to supplement the NRC staff's review of this exemption request.

Section Z.3.5.2.C of Appendix Z of the Amendment No. 13 application uses the ANSYS code to analyze an 80-inch fuel rod side drop. Table Z.3.5–4 summarizes the calculated clad stresses for various fuel types including those with the M5 cladding. The resulting maximum stress of 58,768 psi for the M5 clad fuel is less than the yield strength of 67,300 psi. This translates into a factor of safety of 1.15, meaning that the cladding will not be damaged in such a drop. Thus, for the proposed exemption, the NRC staff concludes with reasonable assurance that M5 clad B&W Mark B11 and B11A fuel assemblies will continue to be preserved after a fuel rod side drop accident in TN NUHOMS® 24PHB DSCs.

Section Z.3.5.3 uses the LSDYNA code to analyze an 80-inch fuel rod corner drop. The strain ductility demand for the B&W 15 x 15 fuels is calculated to be 0.242%, which is below the cladding yield strain of 0.627%. This is an elastic fuel clad response, meaning that the cladding will not be damaged in such a drop. Thus, for the proposed exemption, the NRC staff concludes with reasonable assurance that M5 clad B&W Mark B11 and B11A fuel assemblies will continue to be preserved after a corner drop accident in TN NUHOMS® 24PHB DSCs.

Materials Review for the Requested Exemption: With regard to thermal and corrosive characteristics, the proposed exemption to permit B&W Mark B11 and Mark B11A M5 clad fuel into NUHOMS® 24PHB DSCs at Oconee Nuclear Station is acceptable to the NRC staff, as discussed below. The change will have no impact upon the thermal or corrosive characteristics of the fuel for spent fuel applications. The proprietary mechanical properties of the M5 cladding are different from Zircaloy, but as noted in the structural evaluation above, are found to be acceptable. In addition, the mechanical properties of M5 are within the current licensing basis of the 24PHB DSC (i.e., Amendment No. 9 has already been found safe for fuel cladding with the mechanical properties of M5 clad fuel). Thus, for the proposed exemption, the NRC staff concludes, with reasonable assurance, that with regard to spent fuel thermal and corrosive characteristics, that M5 clad B&W Mark B11 and B11A fuel assemblies can safely be stored in 24PHB DSCs.

Technical Review Conclusion: The NRC staff has reviewed the applicant's exemption request and finds that B&W Mark B11 and B11A M5 zirconium alloy clad fuel can safely be loaded into the NUHOMS® TN 24PHB DSC where all other requirements of Amendment No. 9 are satisfied.

Therefore, the NRC staff concludes that the exemption to allow B&W Mark B11 and Mark B11A fuel assemblies with M5 cladding to be loaded in 24PHB DSCs at the Oconee Nuclear Station ISFSI does not pose an increased risk to public health and safety or the common defense or security.

Otherwise in the Public Interest

In its exemption request, the applicant states that approval will allow Oconee to effectively manage its spent fuel inventory to meet decay heat zoning requirements throughout its scheduled loading campaigns. The applicant's ability to load M5 clad fuel in the next scheduled loading campaign will mean that older fuel assemblies will be available for later loadings. The applicant has considered in its exemption request an alternative action, which would be to load Zircaloy clad ''older'' fuel during its next loading campaign. This would impact subsequent loadings. Sufficient quantities of older fuel would not be available for subsequent loadings to meet the overall cask decay heat requirements, and the canisters would have to be ''short-loaded,'' that is, the full 24 allowed spent fuel assemblies for each cask would not be available, and the canisters would have to be loaded with fewer than 24 assemblies. This would mean that more canisters would ultimately have to be loaded, resulting in additional worker exposure and higher costs. This alternative would also generate additional radioactive contaminated material and waste from additional fuel handling operations and additional loading processes.

The proposed exemption to permit the loading of 24PHB DSCs with M5 clad B&W Mark B11 and Mark B11A fuel assemblies at Oconee Nuclear Station is consistent with NRC's mission to protect public health and safety. Approving the requested loading parameters produces less of an opportunity for a release of radioactive material than the alternative to the proposed action because there will be fewer loadings. Therefore, the exemption is in the public interest.

Environmental Consideration

The NRC staff also considered in the review of this exemption request whether there would be any significant environmental impacts associated with the exemption. For this proposed action, the NRC staff performed an environmental assessment pursuant to 10 CFR 51.30. The proposed action is the approval of a request to exempt the applicant from the requirements of 10 CFR 72.212(a)(2), 72.212(b)(3), 72.212(b)(5)(i), 72.214, and the portion of 72.212(b)(11) that states the licensee shall comply with the terms, conditions, and specifications of the CoC. This would allow the applicant to load 24PHB DSCs with M5 clad B&W Mark B11 and Mark B11A fuel assemblies in the absence of Commission of approval of Amendment No. 13 to CoC 1004.

The environmental assessment concluded that the proposed action would not significantly impact the quality of the human environment. The NRC staff concludes that the proposed action will not result in any changes in the types or amounts of any radiological effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure because of the proposed action. The proposed action only affects the requirements associated with the kinds of fuel cladding permitted for loading into the 24PHB DSC, and does not affect plant effluents, or any other aspects of the environment. The Environmental Assessment and the Finding of No Significant Impact was published on July 3, 2013; 78 FR 40200.

4.0 Conclusion

Based on the foregoing considerations, the NRC has determined that, pursuant to 10 CFR 72.7, the exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the NRC grants the applicant an exemption from the requirements of 10 CFR 72.212(a)(2), 72.212(b)(3), 72.212(b)(5)(i), 72.214, and the portion of 72.212(b)(11) that states the licensee shall comply with the terms, conditions, and specifications of the CoC only with regard to the loading of the M5 clad B & W Mark B11 and Mark B11A fuel. This exemption approval is only valid for authorizing the loading of B&W 15x15 Mark B11 and Mark B11A spent fuel assemblies in the TN Standardized NUHOMS® dry cask storage system at the Oconee Nuclear Station ISFSI until December 31, 2014..

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 12th day of July 2013.

For the Nuclear Regulatory Commission.

Mark Lombard,

Director, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2013–18170 Filed 7–26–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Application For a License to Export Radioactive Waste

Pursuant to 10 CFR 110.70 (b) ''Public Notice of Receipt of an Application,'' please take notice that the Nuclear Regulatory Commission (NRC) has received the following request for an export license. Copies of the request are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link *http://www.nrc.gov/reading-rm.html* at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within thirty days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

A request for a hearing or petition for leave to intervene may be filed with the NRC electronically in accordance with NRC's E-Filing rule promulgated in August 2007, 72 Fed. Reg 49139 (Aug. 28, 2007). Information about filing electronically is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* To ensure timely electronic filing, at least 5 (five) days prior to the filing deadline, the petitioner/requestor should contact the Office of the Secretary by email at *HEARINGDOCKET@NRC.GOV,* or by calling (301) 415–1677, to request a digital ID certificate and allow for the creation of an electronic docket.

In addition to a request for hearing or petition for leave to intervene, written comments, in accordance with 10 CFR 110.81, should be submitted within thirty (30) days after publication of this notice in the **Federal Register** to Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking and Adjudications

The information concerning this application for an export license follows.

NRC EXPORT LICENSE APPLICATION

[Description of material]

Name of applicant, date of application, date received, application No., docket No.	Material type	Total quantity	End use	Destination
Eastern Technologies, Inc., June 4, 2013, June 5, 2013, XW021, 11006101.	Class A radioactive waste as contaminated secondary waste resulting from the dissolving and decontamination of polyvinyl alcohol (PVA) dissolvable protective clothing and related items (e.g., zippers, hook & loop material, elastic, etc.) imported in accordance with NRC license IW032.	The total quantity authorized for export will not exceed quantities imported in accordance with NRC license IW032.	Storage or disposal by the original generators, as required or authorized by their regulator.	Canada.

For the Nuclear Regulatory Commission

Dated this 19th day of July 2013 at Rockville, Maryland.

Nader L. Mamish,

Director, Office of International Programs.

[FR Doc. 2013–18158 Filed 7–26–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Request for a License to Import Radioactive Waste

Pursuant to 10 CFR 110.70 (b) ''Public Notice of Receipt of an Application,'' please take notice that the Nuclear Regulatory Commission (NRC) has received the following request for an import license. Copies of the request are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link *http://www.nrc.gov/reading-rm.html* at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within thirty days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

A request for a hearing or petition for leave to intervene may be filed with the NRC electronically in accordance with NRC's E-Filing rule promulgated in August 2007, 72 FR 49139 (Aug. 28, 2007). Information about filing electronically is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. To ensure timely electronic filing, at least 5 (five) days prior to the filing deadline, the petitioner/requestor should contact the Office of the Secretary by email at *HEARINGDOCKET@NRC.GOV*, or by calling (301) 415–1677, to request a digital ID certificate and allow for the creation of an electronic docket.

In addition to a request for hearing or petition for leave to intervene, written comments, in accordance with 10 CFR 110.81, should be submitted within thirty (30) days after publication of this notice in the **Federal Register** to Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking and Adjudications

The information concerning this import license application follows.

NRC IMPORT LICENSE APPLICATION

Name of Applicant, date of application, date received, application No., Docket No.	Description of Material			
	Material type	Total quantity	End use	Country from
Eastern Technologies, Inc., June 4, 2013, June 5, 2013, IW032. 11006100	Class A radioactive waste consisting of corrosion activation and mixed fission products as contaminants on used protective clothing and other items.	Up to a maximum total of 0.074 TBq (2 Ci) per year (Total: 0.45 TBq (12 Ci) over the life of the license).	Laundering and decontamination of protective clothing and related products used at nuclear power plants in Canada. The residual material from dissolving and decontamination will be returned to Canada under the associated export license (XW021).	Canada

For the Nuclear Regulatory Commission.

Dated this 19th day of July 2013 at Rockville, Maryland.

Mark R. Shaffer,

Deputy Director, Office of International Programs.

[FR Doc. 2013–18155 Filed 7–26–13; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Information Collection;

Standard Form 86 Certification (SF 86C)

AGENCY: U.S. Office of Personnel Management.

ACTION: 60-Day notice and request for comments.

SUMMARY: Federal Investigative Services (FIS), U. S. Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an information collection request (ICR), Office of Management and Budget (OMB) Control No. 3206–NEW, for Standard Form 86 Certification (SF 86C). As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of OPM, including whether the information will have practical utility;

2. Evaluate the accuracy of OPM'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.

DATES: Comments are encouraged and will be accepted until September 27, 2013. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Federal Investigative Services, U. S. Office of Personnel Management, 1900 E Street NW., Washington, DC 20415, Attention: Donna McLeod or sent by email to *FISFormsComments@opm.gov*.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Federal Investigative Services, U. S. Office of

Personnel Management, 1900 E Street, NW., Washington, DC 20415, Attention: Donna McLeod or sent by email to *FISFormsComments@opm.gov*.

SUPPLEMENTARY INFORMATION: Standard Form 86 Certification (SF 86C), is an information collection completed by applicants for, or incumbents of, Federal Government civilian or military positions, or positions in private entities performing work for the Federal Government under contract. The collection is used as the basis of information:

- by the Federal Government in conducting background investigations, reinvestigations, and continuous evaluations, as appropriate, of persons under consideration for or retention in national security sensitive positions as defined in Executive Order 10450 and 5 CFR part 732, and for positions requiring eligibility for access to classified information under Executive Order 12968;
- by agencies in determining whether a person performing work for or on behalf of the Federal Government under a contract should be deemed eligible for logical or physical access when the nature of the work is sensitive and could bring about a material adverse effect on national security.

The SF 86C is completed by civilian employees of the Federal Government, military personnel, and non-federal employees, including Federal contractors and individuals otherwise not directly employed by the Federal Government but who perform work for or on behalf of the Federal Government. Numerous situations exist, requiring an individual to complete a new SF 86, for the sole purpose of determining if any information on the previously executed SF 86 has changed. The SF 86C is used in lieu of a new SF 86, to permit the individual to indicate that no data changes occurred, or to provide new or changed information. The SF 86C is a certification document that permits the reporting of changes on previously reported SF 86 information. Individual agencies maintain the form.

It is estimated that no non-Federal individuals will complete the SF 86C annually for investigations conducted by OPM. The SF 86C is not used as the basis for any investigations conducted by OPM. The SF 86C takes approximately 15 minutes to complete. The estimated annual burden for this form when used in OPM investigations is zero hours.

OPM solicits comments to determine the utility of this collection. If the form no longer meets the intended purpose, OPM recommends abolishing the form. Until that information can be obtained, OPM proposes the following changes to the SF 86C. The collection will include changes to the Privacy Act Routine Uses, to mirror the revised Standard Form questionnaires. Accordingly the term ''Question'' is replaced with ''Section.'' Section 8, U.S. Passport Information created and added to collect U.S.

passport information which was previously collected under Question 9, Citizenship. Question 10, Citizenship was expanded and amended to Section 10, Dual/Multiple Citizenship & Foreign Passport Information. Question 13 was amended to Section 13a, Employment Activities-Employment & Unemployment Record; Section 13b, Employment Activities-Former Federal Service; and Section 13c, Employment Record. Question 17, Marital Status was amended to Section 17, Marital/Relationship Status. Question 20, Foreign Activities was amended to Section 20a, Foreign Activities; Section 20b, Foreign Business, Professional Activities, and Foreign Government Contacts; and Section 20c, Foreign Countries You Have Visited. Question 21, Mental and Emotional Health was amended to Section 21, Psychological and Emotional Health. Question 23, Use of Illegal Drugs and Drug Activity was amended to Section 23, Illegal Use of Drugs and Drug Activity. This ICR also requests categorizing this form as a common form. Once OMB approves the use of this common form, all agencies using the form, not in connection with an OPM investigation may request use of this common form without additional 60 and 30 day notice and comment requirements. At that point, each agency will account for its number of respondents and the burden associated with the agency's use.

U.S. Office of Personnel Management.

Elaine Kaplan,

Acting Director.

[FR Doc. 2013–18149 Filed 7–26–13; 8:45 am]

BILLING CODE 6325–53–P

OFFICE OF PERSONNEL MANAGEMENT

Hispanic Council on Federal Employment

AGENCY: Office of Personnel Management.

ACTION: Cancelling and re-scheduling of Council meetings.

SUMMARY: The Hispanic Council on Federal Employment (Council) is cancelling the August 29, 2013 Council meeting and will hold its remaining 2013 Council meetings on the dates and location shown below. The Council is an advisory committee composed of representatives from Hispanic organizations and senior government officials. Along with its other responsibilities, the Council shall advise the Director of the Office of Personnel Management on matters involving the recruitment, hiring, and advancement of Hispanics in the Federal workforce. The Council is co-chaired by the Chief of Staff of the Office of Personnel Management and the Chair of the National Hispanic Leadership Agenda (NHLA).

The meeting is open to the public. Please contact the Office of Personnel Management at the address shown below if you wish to present material to the Council at any of the meetings. The manner and time prescribed for presentations may be limited, depending upon the number of parties that express interest in presenting information.

DATES: September 19, 2013 from 2:00 p.m.—4:00 p.m.

October 31, 2013 from 2:00 p.m.—4:00 p.m.

December 12, 2013 from 2:00 p.m.—4:00 p.m.

Location: U.S. Office of Personnel Management, 1900 E St. NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Veronica E. Villalobos, Director for the Office of Diversity and Inclusion, Office of Personnel Management, 1900 E St. NW., Suite 5H35, Washington, DC 20415. Phone (202) 606–0020, Fax (202) 606–2183 or email at *veronica.villalobos@opm.gov*.

Elaine Kaplan,

Acting Director, U.S. Office of Personnel Management.

[FR Doc. 2013–18151 Filed 7–26–13; 8:45 am]

BILLING CODE 6820–B2–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70028; File No. SR–ISE–2013–46]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Certain Market Maker Fees

July 23, 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 July 11, 2013, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend Market Maker fees for Regular Orders in Non-Select Symbols and Foreign Currency Options (''FX Options''). The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend certain Market Maker[3] fees for Regular Orders[4] in Non-Select Symbols[5] and FX Options. The fee changes discussed below apply to both standard options and Mini Options traded on ISE. The Exchange's Schedule of Fees has separate tables for fees applicable to standard options and Mini Options. The Exchange notes that while the discussion below relates to fees for standard options, the fees for Mini Options, which are not discussed below, are and shall continue to be 1/10th of the fees for standard options, with the one following exception: when the Exchange commenced trading on Mini Options, it did not apply the Market Maker Discount Tiers in Section VI, C. to Market Maker orders in Mini Options. The Exchange now proposes to extend the Market Maker Discount Tiers to Mini Options and in doing so, proposes to adopt footnote 10 in Section III, Regular Order Fees and Rebates for Mini Options and proposes to adopt a discount fee table applicable to Mini Options in Section VI, Market Maker Discount Tiers.

For Regular Orders in Non-Select Symbols and in FX Options, the Exchange currently charges Market Makers a base execution fee of $0.18 per contract and a lower fee based on a Member's trading activity during a calendar month. Specifically, the Exchange currently charges the following fee:

- First 1,000,000 contracts in a month—$0.18 per contract
- 1,000,001 to 3,000,000 contracts in a month—$0.16 per contract
- 3,000,001 to 5,000,000 contracts in a month—$0.13 per contract
- 5,000,001 to 10,000,000 contracts in a month—$0.03 per contract
- Above 10,000,000 contracts in a month—$0.01 per contract[6]

The current sliding scale applies to all Market Makers[7] for Regular Orders in Non-Select Symbols and in FX Options and is assessed to each Member based on total market maker volume executed by a Member during a calendar month. By way of example, if the Member executes 7,000,000 contracts in the month, the first 1,000,000 contracts will be charged $0.18 per contract, the next 2,000,000 contracts (contracts 1,000,001 to 3,000,000) will be charged $0.16 per contract, the next 2,000,000 contracts (contracts 3,000,001 to 5,000,000) will be charged $0.13 per contract, and the last 2,000,000 contracts (contracts 5,000,001 to 7,000,000) will be charged $0.03 per contract. Importantly, there is no retroactive application of the lowest per contract fee (in this example, $0.03 per contract) to all contracts executed during the month.

The Exchange now proposes to collapse the current sliding scale of five tiers into only two tiers (thus eliminating entirely three tiers). Under this new proposed two tier arrangement, in the first tier the base execution fee of $0.22 per contract will apply to Members who trade 250,000 contracts or less in a calendar month in Non-Select Symbols and FX Options, and in the second tier a fee of $0.15 per contract will apply if a Member trades more than 250,000 contracts in Non-Select Symbols and FX Options in a calendar month. In addition (and in converse to the current sliding scale), once a Member reaches the highest tier, the fee applicable to that tier will apply retroactively to all Market Maker contracts for Regular Orders in Non-Select Symbols and FX Options. For example, a Member who executes 200,000 contracts in Non-Select Symbols and FX Options during a calendar month will be charged $0.22 per contract for all 200,000 contracts. A Member who, however, executes 300,000 contracts in Non-Select Symbols and FX Options during a calendar month will be charged $0.15 per contract for all 300,000 contracts. The Exchange is not proposing any change to the Fee for Regular Orders in Non-Select Symbols and in FX Options for other market participants.

For Crossing Orders in Non-Select Symbols and FX Options, the Exchange currently charges a fee of $0.18 per contract for Market Maker orders. The Exchange now proposes to increase the base execution fee to $0.22 per contract and amend the current discount tiers such that the base execution fee of $0.22 per contract will apply if a Member trades 250,000 contracts or less in Non-Select Symbols and FX Options in a calendar month, and a fee of $0.15 per contract will apply if a Member trades more than 250,000 contracts in Non-Select Symbols and FX Options in a calendar month. The Exchange is not proposing any change to the Fee for Crossing Orders for other market participants.

For Responses to Crossing Orders in Non-Select Symbols and FX Options, the Exchange currently charges a fee of $0.18 per contract for Market Maker orders. The Exchange now proposes to increase the base execution fee to $0.22 per contract and amend the current discount tiers such that the base execution fee of $0.22 per contract will apply if a Member trades 250,000 contracts or less in Non-Select Symbols and FX Options in a calendar month, and a fee of $0.15 per contract will apply if a Member trades more than 250,000 contracts in Non-Select Symbols and FX Options. The Exchange is not proposing any change to the Fee

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* ISE Rule 100(a)(25).

[4] A Regular Order is an order that consists of only a single option series and is not submitted with a stock leg. *See* Schedule of Fees, Preface.

[5] Non-Select Symbols are options overlying all symbols that are not in the Penny Pilot Program.

[6] *See* Schedule of Fees, Section VI, C. ISE Market Maker Discount Tiers.

[7] If a Member firm operates more than one Market Maker membership, all of the Member firm's market maker volume is aggregated for purposes of calculating the transaction fee.

for Responses to Crossing Orders for other market participants.

As noted above, the highest tier achieved by a Member (in terms of volume and fee) for the current calendar month will apply retroactively to all Market Maker orders executed by the Member during such calendar month. For purposes of the Market Maker Discount Tiers, volume in standard options and Mini Options will be combined to calculate the tier a Member has reached. Based on the tier achieved, the Member will be charged for that tier for all the standard options traded at the standard option fee amount and for all the Mini Options traded at the Mini Option fee amount.

With this proposed rule change, the Market Maker fee that is the subject of this proposed rule change will no longer be based on total market maker volume executed by a Member across all symbols traded on the Exchange. The Exchange, therefore, proposes to delete the following text from Section VI, C. of the Schedule of Fees: ''Fee assessed on each member based on total market maker volume executed by each such member during a calendar month.'' The Exchange also proposes to remove text from this section of the Schedule of Fees which states that ''For Complex Orders, only the volume for the leg of a trade consisting of the most contracts is considered for purpose of calculating the volume tiers and the corresponding fee charged'' because the fee discount in this section does not apply to complex orders. Fees for all complex orders for all market participants are found in Section II for standard options and in Section IV for Mini Options.

This proposed rule change will result in an increase in the amount of Market Maker fees paid by a Member for Regular Orders in Non-Select Symbols and FX Options. The Exchange, however, expects this increase to be nominal because the proposed fee will be applied to a group of symbols that are not very actively traded and account for less than twenty percent (20%) of industry volume.

2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(4) of the Act[9] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange Members and other persons using its facilities.

The Exchange believes that the proposed rule change is reasonable and equitably allocated because the resulting fee is within the range of fees assessed by other exchanges. For example, the Chicago Board Options Exchange (''CBOE'') currently charges Market Makers a fee of $0.25 per contract for the first 100,000 contracts and $0.17 per contract for 100,001 to 2,000,000 contracts.[10] The Exchange notes, however, that CBOE excludes certain products from its Market Maker tiers, such as mini-options, VIX options, etc., so the pricing range comparison between ISE and CBOE is not without a few limited exceptions, however the Exchange believes that by not excluding certain products from its Market Maker tiers makes its pricing more competitive as Market Makers have a greater opportunity to achieve the lower tier rate, as certain products are not excluded.

The Exchange's proposal to increase the Market Maker fees for Regular Orders in Non-Select Symbols and FX Options is also reasonable because it should incentivize Members to increase the amount of Regular Orders in Non-Select Symbols and FX Options traded on the Exchange to obtain a lower execution fee. The Exchange's proposed fee change is also equitable and not unfairly discriminatory because while Members will have to transact a greater number of contracts to achieve the tier 2 fee of $0.15 per contract, that fee will apply retroactively to all Regular Orders in Non-Select Symbols and FX Options for that month once a Member reaches the threshold of 250,000 contracts. Further, the Exchange has already established tiers to discount Market Maker fees for Regular Orders in Non-Select Symbols and FX Options, and is now proposing to simplify the tiers and how the fee is applied. The Exchange believes its proposal to amend the Market Maker Discount Tiers is not unfairly discriminatory because the resulting Market Maker fee would apply uniformly to all Regular Orders in Non-Select Symbols and FX Options in the same manner. The Exchange expects this increase to be nominal because the proposed fee will be applied to a group of symbols that are not very actively traded and account for less than twenty percent (20%) of industry volume. Finally, by applying the lower fee retroactively to all Regular Orders in Non-Select Symbols and FX Options for that month once a Member reaches the threshold of 250,000 contracts (as opposed to the current sliding scale which does not retroactively apply the lower fee to all contracts), the Exchange expects that this, too, will cause the increase to be nominal.

The Exchange has determined to charge fees for Regular Orders in Mini Options at a rate that is 1/10th the rate of fees the Exchange currently provides for trading in standard options. The Exchange believes it is reasonable and equitable and not unfairly discriminatory to assess lower fees to provide market participants an incentive to trade Mini Options on the Exchange. The Exchange believes the proposed fees are reasonable and equitable in light of the fact that Mini Options have a smaller exercise and assignment value, specifically 1/10th that of a standard option contract, and, as such, levying fees that are 1/10th of what market participants pay to trade standard options.

The Exchange believes it is reasonable and equitable to charge a Market Maker fee of $0.22 per contract for Regular Orders in Non-Select Symbols and FX Options and also when such members are responding to crossing orders because the fee is also within the range of fees assessed by other exchanges employing similar pricing schemes. By comparison, the proposed fees are lower than the rates assessed by CBOE for similar orders.[11] The Exchange notes that an execution resulting from a response to a crossing order is akin to an execution and therefore its proposal to establish execution fees and fees for responses to crossing orders that are identical is reasonable and equitable. The Exchange believes its proposal to increase the execution fee and fee for responses to crossing orders for Market Makers for Regular Orders in Non-Select Symbols and FX Options is not unfairly discriminatory because the proposed fees would apply uniformly to all Market Maker orders in the same manner.

The Exchange believes that the price differentiation between the various market participants is justified. With respect to Market Maker fees for Regular Orders, the Exchange believes that the price differentiation between the various market participants is appropriate and not unfairly discriminatory because Market Makers have different requirements and obligations to the Exchange that the other market participants do not (such as quoting requirements and paying membership-related non-transaction fees). The Exchange believes that it is equitable and not unfairly discriminatory to assess a higher fee to

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] *See* CBOE Fees Schedule at *http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf.*

[11] *Id.*

market participants that do not have such requirements and obligations that Exchange Market Makers do, with the exception of orders for Priority Customers for which there are no transaction fees. As discussed further in section 4. below regarding intra-market competition, in this instance, there is no reason to adjust the fee for Market Maker orders entered by Electronic Access Members, as such orders have a distinct business purpose and are also affected by various other fees and rebates on the Exchange, and thus it is reasonable to make no adjustment at this time.

Moreover, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory because they are consistent with price differentiation that exists today at other options exchanges. Additionally, the Exchange believes it remains an attractive venue for market participants to direct their order flow in the symbols that are subject to this proposed rule change as its fees are competitive with those charged by other exchanges for similar trading activities. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to another exchange if they deem fee levels at a particular exchange to be excessive. For the reasons noted above, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

ISE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed fee change does not impose a burden on competition because it is consistent with fees charged by other exchanges. The proposed fees, which the Exchange believes are comparable to fees charged by its competitors for similar orders, will encourage competition and continue to attract additional order flow in these symbols to ISE.

The Exchange notes that it operates in a highly competitive market in which market participants can readily direct their order flow to competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. Since competitors of the Exchange are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, ISE believes that the degree to which fee changes in this market may impose a burden on competition is limited. In this instance, ISE is instituting a nominal increase. If the fee change is unattractive to market participants, it is likely that ISE will not attract additional order flow in the symbols that that are subject to the proposed fee change. For the reasons described above, the Exchange believes that the proposed fee change reflects this competitive environment.

The Exchange believes the proposed Market Maker fee change will not impose any unnecessary burden on intramarket competition because, while it only applies to Market Maker orders, Market Makers take on a number of obligations and responsibilities, significant regulatory burdens, and financial obligations that other market participants are not required to undertake. The proposed Market Maker fee change may attract increased order flow in Non-Select Symbols and FX Options to the Exchange, which will provide increased volume and greater trading opportunities for all market participants. With respect to the price differentiation between Market Makers entering Regular Orders directly versus entering Regular Orders through an Electronic Access Member (''EAM''), the Exchange notes that such fees have historically been at different levels and have been adjusted from time to time. EAMs representing Market Makers is a distinct business activity, different from when Market Makers are directly trading on the Exchange by submitting quotations in the course of regular market making. Using an EAM as the executing broker to submit an order, the Market Maker may be participating in a crossing transaction or 'working' an order, which may involve different non-Exchange costs or discounts. Because of this different dynamic, while the fee for a Market Maker entering a Regular Order through an EAM is different from the fee for a Market Maker entering a Regular Order directly, the fees are in the same range, but the former is recognized as a distinct business and thus is a distinct item on the Exchange's Schedule of Fees. Therefore, the Exchange believes that any potential effects on intramarket competition that the proposed fee change may cause are justified.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [12] and subparagraph (f)(2) of Rule 19b–4 thereunder,[13] because it establishes a due, fee, or other charge imposed by ISE.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2013–46 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–ISE–2013–46. 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

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

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–ISE–2013–46 and should be submitted on or before August 19, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–18076 Filed 7–26–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70027; File No. SR–CBOE–2013–076]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Continuing Education

July 23, 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 July 22, 2013, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 9.3A regarding continuing education for registered persons. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend Rule 9.3A to specify the different Continuing Education (''CE'') requirements for registered persons based upon their registration with the Exchange. This change will authorize the Exchange to administer different CE programs to differently registered individuals while bringing clarity to Trading Permit Holders (''TPHs'') about what CE requirement they must fulfill. More specifically, the Exchange is proposing to: (1) Enumerate the required Regulatory Element programs, (2) add language to Rule 9.3A that would outline which program Exchange registered persons engaging in proprietary trading must take, and (3) add language to 9.3A(c) specifying that registered persons with a Series 56 registration must complete the Firm Element of the CE requirement.

Background

Currently, Exchange Rule 3.6A.04 states that that each individual registered with the Exchange shall ''satisfy the continuing education requirements set forth in Rule 9.3A.''[5] Exchange Rule 9.3A specifies the CE requirements for registered persons subsequent to their initial qualification and registration with the Exchange. The requirements consist of a Regulatory Element and a Firm Element.[6] The Regulatory Element is a computer-based education program administered by the Financial Industry Regulatory Authority (''FINRA'') to help ensure that registered persons are kept up to date on regulatory, compliance and sales practice matters in the industry.[7] Currently, there are three Regulatory Element programs: the S201 Supervisor Program for registered principals and supervisors; the S106 Series 6 Program for Series 6 registered persons; and the S101 General Program for Series 7 and all other registered persons. The Exchange is proposing to enumerate these programs in the Exchange Rulebook along with adding the S501 Series 56 Proprietary Trader Continuing Education Program for Series 56 registered persons.

Introduction of the Proprietary Trading Continuing Education Program

The Exchange is proposing to introduce a new CE Program for Proprietary Traders registered with the Exchange who have successfully completed the Proprietary Traders Examination (''Series 56'') and who have no other registrations. Exchange Rule 3.6A.08 outlines the registration and qualification requirements (including prerequisite examinations) for TPHs and TPH organizations conducting proprietary trading, market-making and/or effecting transactions on behalf of other broker dealers.[8] An

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[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Exchange Rule 3.6A.04.

[6] Currently, the Firm Element of the CE Program applies to any person registered with a CBOE member firm who has direct contact with customers in the conduct of the member's securities sales, trading and investment banking activities, and to the immediate supervisors of such persons (collectively called ''covered registered persons''). The requirement stipulates that each member firm must maintain a continuing education program for its covered registered persons to enhance their securities knowledge, skill and professionalism. Each firm has the requirement to annually conduct a training needs analysis, develop a written training plan, and implement the plan.

[7] Rule 9.3A permits a member firm to deliver the Regulatory Element to registered persons on firm premises (''In-Firm Delivery'') as an option to having persons take the training at a designated center provided that firms comply with specific requirements relating to supervision, delivery site(s), technology, administration, and proctoring. In addition, Rule 9.3A requires that persons serving as proctors for the purposes of In-Firm Delivery must be registered.

[8] *See* Exchange Rule 3.6A.08 which outlines the qualification requirements for each of the required registration categories on the Exchange: (1) Proprietary Trader, Proprietary Trader Principal, and Proprietary Trader Compliance Officer.

individual TPH and/or individual associated person who is engaged in the securities business of a TPH (as described in Interpretation and Policy .06 to Rule 3.6A) is required to register as a Proprietary Trader in CRD and pass the related qualification examination, the Series 56.[9]

The Proprietary Trader Continuing Education Program (S501) is a computer-based education program developed by many of the self-regulatory organizations (''Participating SROs'')[10] and administered by FINRA to ensure that registered persons are kept current on regulatory, compliance and trading practice matters in the industry. Unlike the other offered CE Programs, the Proprietary Trader Continuing Education Program is not part of the Uniform Continuing Education Program, which is developed and maintained by the Securities Industry Regulatory Council on Continuing Education.

The Proprietary Trader Continuing Education Program will logistically operate as the currently offered CE Programs do. Specifically, registered persons will be required, through CRD, to complete the Regulatory Element of the CE on the second anniversary of the base date and then every three years thereafter. While creating the S501, the Participating SROs believe that the current procedures of the other CE programs work well. The Securities Industry Regulatory Council on Continuing Education has tailored the process of the other CE Programs since its inception to a process that has been successful. Thus, as proposed, the S501 will work in the same manner. In addition, consistency between the different programs will avoid creating confusion amongst the registered persons and FINRA.

The Proprietary Trader Continuing Education Program (S501) is required for those registrants who registered as Proprietary Traders (''Series 56'') and do not maintain any other registration through CRD.[11] Individuals that are registered under any other registration are required to maintain the CE obligations associated with those registrations. For example, an individual that is registered as a Proprietary Trader with the Exchange yet continues to maintain a Series 7 registration will be required to continue taking the Series 7 Continuing Education Program (S101).[12] Though such individual may be engaging in the same capacity as one registered as a Proprietary Trader, because the Series 7 Examination is a more comprehensive exam of topics not covered on the Series 56, the Exchange believes that this individual continuing to maintain a Series 7 registration should complete a CE that covers all aspects of his or her registration.

As part of the new Proprietary Trader CE, registered persons will also be required to complete the Firm Element outlined in Exchange Rule 9.3A(c). Though proprietary traders with a Series 56 registration do not interact with the public, the Exchange believes this requirement is appropriate as it ensures these registered persons continue to enhance their securities knowledge, skill and professionalism. As stated in Exchange Rule 9.3A(c)(ii), the program should be tailored to fit the business of the Trading Permit Holder or TPH organization. Thus, the Exchange believes it is appropriate that these individuals also complete the Firm Element.

The introduction of the Proprietary Trader Continuing Education Program allows the Exchange to tailor its CE requirements more closely to those registered individuals who are registered as Series 56. More specifically, the Exchange believes allowing individuals engaging in proprietary trading and registered under the Series 56 to complete a separate CE Program than those maintaining a Series 7 registration is appropriate as all individuals have the option of taking either test. In comparison to the Series 7, the Series 56 Examination is more closely tailored to the practice of proprietary trading while the Series 7 is more comprehensive. As such, the Exchange believes a Series 56 CE Program should be tailored as well. At the same time, if an individual would like to remain registered as a Series 7, the Exchange believes it is appropriate they continue to be required to complete the broader CE program. As stated above, though an individual maintaining a Series 7 registration may be engaging in the same capacity as one one [sic] registered as a Proprietary Trader, because the Series 7 Examination is a more comprehensive exam of topics not covered on the Series 56, the Exchange believes that such individual that continues to maintain a Series 7 registration should complete a CE that covers all aspects of his or her registration.

2. Statutory Basis

The proposed rule change is consistent with Section 6(c) of the Act,[13] in general, and furthers the objectives of Section 6(c)(3)[14] of the Act, which authorizes the Exchange to prescribe standards of training, experience and competence for persons associated with the Exchange TPHs, in that the proposed rule codifies the existing requirements for Exchange TPHs and TPH organizations. The proposed rule also introduces a new CE program which merely prescribes a standard for Series 56 registered persons. The Exchange believes the proposed changes are reasonable and set forth the appropriate CE requirements for an individual Trading Permit Holder or individual associated person who is required to register under Exchange Rule 3.6A.

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. Specifically, the Exchange does not believe the administrative changes being made nor the introduction of the Proprietary Trader Continuing Education Program (S501) will affect intermarket competition as the Exchange believes all Exchanges offering the same CE requirements will file similar rules addressing those CE Programs. In addition, the Exchange does not believe the proposed changes will affect intramarket competition because all similarly situated registered persons, *e.g.* registered persons maintaining the same registrations, are required to

[9] *See* Exchange Rule 3.6A.06.

[10] The Participating SROs that have assisted with the development of, and plan to administer, the Series 56 and S501 are the Exchange, C2 Options Exchange, Incorporated (''C2''), the Chicago Stock Exchange, Inc. (''CHX''), the New York Stock Exchange, LLC (''NYSE''), NYSE Arca, Inc. (''Arca''), NYSE Amex, LLC (''Amex''), the NASDAQ Stock Market LLC (''NASDAQ''), the National Stock Exchange, Inc. (''NSX''), NASDAQ OMX BX, Inc. (''BX''), NASDAQ OMX PHLX, LLC. (''PHLX''), BATS Y-Exchange, Inc.(''BATS Y''), BATS Exchange, Inc. (''BATS''), EDGA Exchange, Inc. (''EDGA''), EDGX Exchange, Inc. (''EDGX''), International Securities Exchange, LLC (''ISE''), and BOX Options Exchange, LLC (''BOX'').

[11] Any registered person who receives a waiver of the Series 56 under Exchange Rule 3.6A.05, and does not maintain any other registrations in CRD, will be required to complete the Proprietary Trader Continuing Education Program (S501). Such individuals will also be required to complete the Firm Element which is currently described in Exchange Rule 9.3A(b).

[12] *See* footnote 11, *supra.* If a registered person has received a Series 56 waiver under Exchange Rule 3.6A.05 but continues to maintain a Series 7 registration (that predates the introduction of the Series 56 on the Exchange) that registered individual will only be required to continue taking the Series 7 CE Program (S101). Through CRD, FINRA will recognize the Series 56 as waived while still requiring the Series 7 CE completion.

[13] 15 U.S.C. 78f(c).

[14] 15 U.S.C. 78f(c)(3).

complete the same CE requirements. For example, all individuals maintaining a Series 7 registration will be required to complete the Series 7 CE while all individuals maintaining a Series 56 registration (and no other registrations) will be required to complete the new Series 56 CE.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(6) thereunder.

The Exchange has requested that the Commission waive the 30-day operative delay. The rule change specifies that proprietary traders who have qualified by taking the Series 56 exam or receiving a waiver of the Series 56 examination requirement, must take the S 501 continuing education program. The Exchange has represented that the S 501 continuing education will be available on August 19, 2013. Waiver of the operative delay will enable those registered persons required to take the S 501 continuing education to do so as soon as the program becomes available, enabling them to comply with their continuing education requirements in a timely manner, and thus is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposal operative upon filing.[16]

At any time within 60 days of the filing of this 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–2013–076 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–2013–076. 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, 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 CBOE. 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–2013–076 and should be submitted on or before August 19, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–18074 Filed 7–26–13; 8:45 am]

BILLING CODE 8011–01–P

[15] 15 U.S.C. 78s(b)(3)(A).

[16] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70025; File No. SR–MIAX–2013–35]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Delay the Operative Date of a Recent Change to Exchange Rule 506

July 23, 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 July 9, 2013, Miami International Securities Exchange LLC (''Exchange'' or ''MIAX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to delay the operative date of a recent change to Rule 506. There are no proposed changes to the rule text.

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.

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On April 24, 2013, the Exchange filed a rule change, which became effective on that date, to amend Rule 506 to make available to subscribers of its MIAX Top of Market (''ToM'') data feed the quantity of Priority Customer contracts included in the MIAX Best Bid and Offer (''MBBO'') disseminated by the Exchange.[3] The proposed rule change in that filing became effective on filing and was set to become operative by July 10, 2013. Pursuant to the previously filed rule change, the Exchange announced via a Regulatory Circular an implementation date of July 10, 2013.[4]

The purpose of this rule filing is to delay the operative date of the change to Rule 506 in rule filing SR–MIAX–2013–18 until MIAX has completed the necessary changes to its ToM data feed. The Exchange will announce the implementation date of the proposed rule change in a Regulatory Circular to be published no later than 30 days following the publication of the notice in the **Federal Register**. The implementation date will be no later than 30 days following the publication of the Regulatory Circular announcing publication of the notice in the **Federal Register**.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that delaying the operative date of this change to its ToM data feed will protect investors because it will provide the Exchange with sufficient time to complete its system work and perform sufficient testing that is necessary to ensure that this new feature will function as described in rule filing SR–MIAX–2013–18.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. This proposed rule change delays the operative date of the change to the Exchange's ToM data feed, and the Exchange will announce the new operative date in a Regulatory Circular that is available for all Exchange members.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[9] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[10] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay to allow the Exchange sufficient time to update and test its system to accommodate the technical functionality that was the subject of the recent proposed rule change discussed above. The Commission finds that such waiver is consistent with the protection of investors and the public interest, because without such waiver, the proposed delay of the implementation date could not become operative for 30 days, and pursuant to the Exchange's previously issued Regulatory Circular,[11] the amendment to Rule 506 would therefore become operative on July 10, 2013. As noted, the Exchange has represented that it needs additional time to develop the technical functionality needed for that rule change. Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing.[12]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–MIAX–2013–35 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.

[3] *See* Securities Exchange Act Release No. 69518 (May 6, 2013) 78 FR 27462 (May 10, 2013) (SR–MIAX–2013–18).

[4] *See* MIAX Regulatory Circular 2013–32 available at *http://www.miaxoptions.com/sites/default/files/circular-files/MIAX_RC_2013_32.pdf*

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] *See supra* note 4.

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

All submissions should refer to File Number SR–MIAX–2013–35. 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 publicly available. All submissions should refer to File Number SR–MIAX–2013–35 and should be submitted on or before August 19, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority. [13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–18072 Filed 7–26–13; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70024; File No. SR–MIAX–2013–34]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Delay the Operative Date of a Recent Change to Exchange Rule 514

July 23, 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 July 9, 2013, Miami International Securities Exchange LLC (''Exchange'' or ''MIAX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to delay the operative date of a recent change to Rule 514. There are no proposed changes to the rule text.

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

On May 1, 2013, the Exchange filed a rule change, which became effective on that date, to amend Rule 514 to allow an Electronic Exchange Member (''EEM'') to designate a Lead Market Maker (''LLM''), regardless of appointment, on orders it enters into the Exchange System (''Directed Orders'').[3] The proposed rule change in that filing became effective on filing and was set to become operative by July 9, 2013. Pursuant to the previously filed rule change, the Exchange announced via a Regulatory Circular an implementation date of July 9, 2013.[4]

The purpose of this rule filing is to delay the operative date of the change to Rule 514 in rule filing SR–MIAX–2013–20 until MIAX has completed the necessary changes to its system to allow all EEMs to send Directed Orders to all LLMs. The Exchange will announce the implementation date of the proposed rule change in a Regulatory Circular to be published no later than 30 days following the publication of the notice in the **Federal Register.** The implementation date will be no later than 30 days following the publication of the Regulatory Circular announcing publication of the notice in the **Federal Register.**

[3] *See* Securities Exchange Act Release No. 69507 (May 3, 2013) 78 FR 27269 (May 9, 2013) (SR–MIAX–2013–20).

[4] *See* MIAX Regulatory Circular 2013–31 available at *http://www.miaxoptions.com/sites/default/files/circular-files/MIAX_RC_2013_31.pdf.*

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that delaying the operative date of this change to allow EEMs to send Directed Orders to all LMMs will protect investors because it will provide the Exchange with sufficient time to complete its system work and perform sufficient testing that is necessary to ensure that this new feature will function as described in rule filing SR–MIAX–2013–20.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. This proposed rule change delays the operative date of the change to allow EEMs to send Directed Orders to all LLMs, and the Exchange will announce the new operative date in a Regulatory Circular that is available for all Exchange members.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [7] and Rule 19b–4(f)(6) thereunder.[8] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [9] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[10] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay to allow the Exchange sufficient time to update and test its system to accommodate the technical functionality that was the subject of the recent proposed rule change discussed above. The Commission finds that such waiver is consistent with the protection of investors and the public interest, because without such waiver, the proposed delay of the implementation date could not become operative for 30 days, and pursuant to the Exchange's previously issued Regulatory Circular,[11] the amendment to Rule 514 would therefore become operative on July 9, 2013. As noted, the Exchange has represented that it needs additional time to develop the technical functionality needed for that rule change. Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing.[12]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–MIAX–2013–34 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–MIAX–2013–34. 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 publicly available. All submissions should refer to File Number SR–MIAX–2013–34 and should be submitted on or before August 19, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–18073 Filed 7–26–13; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] *See supra* note 4.

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70026; File No. SR–Phlx–2013–65]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change Relating To Which Complex Orders Can Initiate a Complex Order Live Auction

July 23, 2013.

On June 11, 2013, NASDAQ OMX PHLX LLC (the ''Exchange'' or ''Phlx'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change that would allow the Exchange to determine by order sender which complex orders can initiate a Complex Order Live Auction (''COLA''). The proposed rule change was published for comment in the **Federal Register** on June 27, 2013.[3] The Commission has not received comment letters on this proposal.

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 69829 (June 21, 2013), 78 FR 38750.

[4] 15 U.S.C. 78s(b)(2).

the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is August 11, 2013. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider this proposed rule change, which, if approved, would allow the Exchange to determine by order sender which complex orders submitted to the Exchange will trigger a COLA.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates September 25, 2013, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–Phlx–2013–65).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–18075 Filed 7–26–13; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70029; File No. SR–ISE–2013–45]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees

July 23, 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 July 11, 2013, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend its Schedule of Fees to modify its routing fees and to eliminate a fee discount applicable to Foreign Currency Options (''FX Options'') traded on the Exchange. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend the Schedule of Fees to modify the route-out fee applicable to Priority Customer[3] and Professional Customer[4] orders and to eliminate a fee discount applicable to FX Options traded on the Exchange. First, the Exchange currently charges a fee of $0.35 per contract and $0.45 per contract to executions of Priority Customer and Professional Customer orders, respectively, for standard options in all symbols that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan. For Mini Options, this fee is currently $0.035 per contract for Priority Customer orders and $0.045 per contract for Professional Customer orders. The Exchange now proposes to increase the route-out fee for Priority Customer and Professional Customer orders for standard options to $0.38 per contract and $0.55 per contract, respectively. For Mini Options, the Exchange proposes to increase the route fee for Priority Customer orders to $0.038 per contract and for Professional Customer orders to $0.055 per contract.

The route-out fee offsets costs incurred by the Exchange in connection with using unaffiliated broker-dealers to access other exchanges for linkage executions and is therefore appropriate because the market professionals that are submitting these orders can route them directly to away exchanges, if desired, and should not be able to forgo an away market fee by directing their orders to the ISE. These costs incurred by the Exchange recently increased as a result of the Exchange's changing the way Priority Customer and Professional Customer orders are handled under the Options Order Protection and Locked/Crossed Market Plan.[5]

Second, the Exchange currently provides a fee discount for large-sized FX Options orders. The fee discount applies to orders of 250 contracts or more and waives fees on incremental volume above 250 contracts. Contracts at or under the threshold are charged the constituent's prescribed execution fee. The fee discount applies to all market participants who trade FX Options on the Exchange. The Exchange initially adopted the fee discount for large-sized FX Options orders in 2008.[6] The fee discount was subsequently extended[7] and expired on June 30, 2013.[8] The Exchange has determined to eliminate this fee discount because the Exchange believes it is no longer necessary to provide an incentive to attract large-sized FX Options orders to the Exchange and therefore, proposes to remove reference to this fee discount from its Schedule of Fees.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4) that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, the

[3] A Priority Customer is defined in ISE Rule 100(a)(37A) as a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

[4] A Professional Customer is a person who is not a broker/dealer and is not a Priority Customer.

[5] *See* Securities and Exchange Act Release No. 69396 (April 18, 2013), 78 FR 24273 (April 24, 2013) (SR–ISE–2013–18) (Order Approving Order Handling Under the Options Order Protection and Locked/Crossed Market Plan).

[6] *See* Securities Exchange Act Release No. 58139 (July 10, 2008), 73 FR 41142 (July 17, 2008) (SR–ISE–2008–54).

[7] *See* Securities Exchange Act Release Nos. 60192 (June 30, 2009), 74 FR 32211 (July 7, 2009) (SR–ISE–2009–42); 62506 (July 15, 2010), 75 FR 42801 (July 22, 2010) (SR–ISE–2010–67); and 64743 (June 24, 2011, 76 FR 38434 (June 30, 2011) (SR–ISE–2011–35).

[8] *See* Securities Exchange Act Release No. 67212 (June 19, 2012), 77 FR 37947 (June 25, 2012) (SR–ISE–2012–55).

Exchange believes the proposed route-out fee is reasonable and equitable as it provides the Exchange the ability to recover costs associated with using unaffiliated broker-dealers to route Priority Customer and Professional Customer orders to other exchanges for ''linkage'' executions. These costs incurred by the Exchange recently increased as a result of the Exchange's changing the way Priority Customer and Professional Customer orders are handled under the Options Order Protection and Locked/Crossed Market Plan.[9] The Exchange also believes that the proposed fees are not unfairly discriminatory because these fees would be uniformly applied to all Priority Customer and Professional Customer orders. As fees to access liquidity for Priority and Professional Customer orders have risen at other exchanges, it has become necessary for the Exchange to raise routing fees in order to recoup the higher costs. The Exchange notes that a number of other exchanges currently charge a variety of routing related fees associated with customer and non-customer orders that are subject to linkage handling. The Exchange also notes that the fees proposed herein are within the range of fees charged by some of the Exchange's competitors.[10]

The Exchange has determined to charge fees for regular orders in Mini Options at a rate that is 1/10th the rate of fees the Exchange currently provides for trading in standard options. The Exchange believes it is reasonable and equitable and not unfairly discriminatory to assess lower fees to provide market participants an incentive to trade Mini Options on the Exchange. The Exchange believes the proposed fees are reasonable and equitable in light of the fact that Mini Options have a smaller exercise and assignment value, specifically 1/10th that of a standard option contract, and, as such, levying fees that are 1/10th of what market participants pay to trade standard options. As a result, routing fees for Mini Options will continue to be charged at 1/10th the rate of fees of standard options.

The Exchange's proposal to remove references to the fee discount for large-sized FX Options from its Schedule of Fees is reasonable, equitable and not unfairly discriminatory because the Exchange has determined to no longer provide an incentive to attract this order flow to the Exchange. The reference to this fee discount on the Exchange's Schedule of Fees for large-sized FX Options is therefore unnecessary.

B. Self-Regulatory Organization's Statement on Burden on Competition

ISE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed fee change does not impose a burden on competition because the proposed fee is consistent with fees charged by other exchanges and will uniformly apply to all Priority Customer and Professional Customer orders in standard options and Mini Options that are routed out to other exchanges for linkage executions. The Exchange notes that Members can and do route these orders to other markets or to specify that ISE not route orders away on their behalf. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct their order flow to competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed fee change reflects this competitive environment. Furthermore, neither fee change presents a change to or impacts intra-market competition as the route out fee applies to orders routed to away markets and the large-sized FX Options order incentive does not change the relative levels of fees paid by various ISE participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[11] and subparagraph (f)(2) of Rule 19b–4 thereunder,[12] because it establishes a due, fee, or other charge imposed by ISE.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2013–45 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–ISE–2013–45. 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

[9] *See* note 5.

[10] *See* NASDAQ OMX PHLX (''PHLX'') Fee Schedule, Section V, Routing Fees; and Chicago Board Options Exchange (''CBOE'') Fees Schedule, Linkage Fees.

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

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–ISE–2013–45, and should be submitted on or before August 19, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–18077 Filed 7–26–13; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of 30 day reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before August 28, 2013. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Curtis Rich, Small Business Administration, 409 3rd Street SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Curtis Rich, Agency Clearance Officer, (202) 205–7030 *curtis.rich@sba.gov*.

SUPPLEMENTARY INFORMATION:

Title: Statement of Personal History.

Frequency: On Occasion.

SBA Form Number: 1081.

Description of Respondents: Small Business Lending Companies.

Responses: 215.

Annual Burden: 107.50.

Curtis Rich,

Management Analyst.

[FR Doc. 2013–17948 Filed 7–26–13; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 02/02–0662]

DeltaPoint Capital IV, LP;

Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that DeltaPoint Capital IV, L.P., 45 East Avenue, 6th Floor, Rochester, NY 14604, Federal Licensees under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). DeltaPoint Capital IV, L.P. provided financing to BioMaxx, Inc., 1 Fishers Road, Suite 160, Pittsford, NY 14534. The financing was contemplated for working capital.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because DeltaPoint Capital IV (New York), L.P., an Associate of DeltaPoint Capital IV, L.P., owns more than ten percent of BioMaxx, Inc.

Therefore, this transaction is considered a financing of an Associate requiring an exemption. Notice is hereby given that any interested person may submit written comments on the transaction within fifteen days of the date of this publication to the Acting Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

Dated: July 15, 2013.

Pravina Raghavan,

Acting Associate Administrator for Investment & Innovation.

[FR Doc. 2013–17945 Filed 7–26–13; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 8396]

Shipping Coordinating Committee; Notice of Committee Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on Wednesday, August 14, 2013, in Room 5–0624 of the United States Coast Guard Headquarters Building, 2100 2nd Street SW., Washington, DC 20593. The primary purpose of the meeting is to prepare for the thirty-ninth Session of the International Maritime Organization's (IMO) Facilitation Committee to be held at the IMO Headquarters, United Kingdom, October 20–24, 2014.

The agenda items to be considered include:

—Decisions of other IMO bodies
—Consideration and adoption of amendments to mandatory instruments
—General review of the Convention, including harmonization with other international instruments
—E-business possibilities for the facilitation of maritime traffic:
A. electronic means for the clearance of ships, cargo and passengers
B. electronic access to, or electronic versions of, certificates and documents required to be carried on ships
—Formalities connected with the arrival, stay and departure of persons:
A. shipboard personnel
B. stowaways
C. illegal migrants
D. persons rescued at sea
—Ensuring security in and facilitating international trade:
A. shore leave and access to ships
B. trade recovery
—Ship/port interface
—Technical Co-operation activities related to facilitation of maritime traffic
—Relations with other organizations
—Application of the Committee's Guidelines
—Work programme
—Election of Chairman and Vice-Chairman for 2015
—Any other business

Members of the public may attend this meeting up to the seating capacity of the room. To facilitate the building security process, and to request reasonable accommodation, those who plan to attend should contact the meeting coordinator, Mr. David Du Pont, by email at *David.A.DuPont@uscg.mil*, by phone at (202) 372–1497, by fax at (202) 372–1928, or in writing at Commandant (CG–REG), U.S. Coast Guard, 2100 2nd Street SW Stop 7126, Washington, DC 20593–7126 not later than August 6, 2013, 7 days prior to the meeting. Requests made after August 6, 2013, might not be able to be accommodated. Please note that due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to the Headquarters building. The

[13] 17 CFR 200.30–3(a)(12).

Headquarters building is accessible by taxi and privately owned conveyance (public transportation is not generally available). However, parking in the vicinity of the building is extremely limited.

For members of the public that would like to participate, but are unable to attend this meeting the Coast Guard will provide a teleconference option. To participate by phone, contact the meeting coordinator (details above) to obtain teleconference information. Note the number of teleconference lines is limited and will be available on a first-come, first-served basis.

Additional information regarding this and other IMO SHC public meetings may be found at: *www.uscg.mil/imo.* Information specific to the Facilitation Committee may be found at *www.uscg.mil/imo/fal* and *www.uscg.mil/hq/cg5/cg523/imo.*

Dated: July 23, 2013.

Marc Zlomek,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 2013–18169 Filed 7–26–13; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 8397]

Bureau of European and Eurasian Affairs (EUR) Request for Proposals for the Fundraising, Construction, Development, Organization, Management, Disassembly and Removal of a USA Pavilion/Exhibition at Universal Expo Milan Italy 2015, Hereafter Referred to as Milan Expo 2015

Key Dates

Application Deadline: Sunday, Sept 15, 2013.

Executive Summary

The Bureau of European and Eurasian Affairs (EUR) of the Department of State requests proposals from private U.S. individuals, firms, associations and organizations (for profit and non-profit) for the fundraising, construction, development, organization, and management, and disassembly and removal of a USA Pavilion/exhibition at Milan Expo 2015. The USA Pavilion will be situated on a 2790 square meter plot with a building footprint no more than 70% of the plot size.

The Department will issue a ''letter of intent'' to the selected organization authorizing that organization to proceed with fundraising to complete the USA Pavilion project. The letter will include guidelines on fundraising to be followed by the selected organization and will establish a deadline for completion of all fundraising activities. Note that all prospective donors must be vetted with the Department of State for potential conflicts of interest.

Cost for a representative USA Pavilion/exhibition for Milan Expo 2015 is estimated to range between $25 million and $45 million and will be the sole responsibility of the selected organization.

The Department of State is not now authorized, and does not in the future intend to seek authorization from the U.S. Congress, to provide federal funding for any aspect of the USA Pavilion/exhibition at Milan Expo 2015. The successful applicant will be responsible for all costs associated with all aspects of the USA Pavilion including its design, development, construction, staffing, management and dismantling and removal of the exhibit at the end of the Expo, as well as all support for the U.S. Commissioner General to be appointed by the President of the United States. The U.S. Pavilion shall be considered on loan to the U.S. Government, and the successful applicant shall be solely responsible for the disposition of the USA Pavilion Exhibits at the conclusion of Milan Expo 2015. The aforementioned loan shall be treated as a gift to the U.S. Government.

The successful applicant must be able to demonstrate to the U.S. Department of State that it can raise the funds necessary to complete the project. Only after the applicant is able to demonstrate that all funding required for this project will be in hand will the Department of State sign a Memorandum of Understanding (MOU) with that applicant, sign a Participation Contract with the Expo organizing body, and appoint a Commissioner General. Proposals from non-U.S. citizens or non-U.S. firms or organizations shall be deemed ineligible for consideration.

Authority

Overall authority for Department of State support for U.S. participation in international expositions is contained in Section 102(a)(3) of the Mutual Educational and Cultural Exchange Act of 1961, as amended (22 U.S.C. 2452(a)(3), also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries...to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations...and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' Pursuant to this authority, on a one-time basis, the Secretary of State has delegated authority for this particular Expo to the Bureau of European and Eurasian Affairs (EUR), which will be responsible for coordinating U.S. participation in the Milan Expo 2015. Consequently, EUR will represent the U.S. Government in dealings with the organizers of the Milan Expo 2015.

Background

The Government of Italy has invited the United States to participate in the Milan Expo 2015 and the U.S. Government has advised the Italian Government of its intention to participate with an official USA Pavilion assuming identification of a viable private sector partner and successful fundraising efforts. Milan Expo 2015 will be held on specially constructed exhibition grounds. The Expo opens on May 1, 2015 and closes on October 31, 2015.

''Expo 2015 Milano Italy'' is a large-scale, universal exposition (world's fair) registered (sanctioned) by the Bureau of International Expositions (BIE). The BIE is an international treaty organization established to sanction and monitor international exhibitions of long duration (over three weeks) and significant scale.

Invitations to world's fairs are extended from the host government to other governments. The United States is not a member of the BIE, and the U.S. Commissioner General, therefore, will not be a formal member of the Steering Committee of the College of Commissioners General for Milan Expo 2015.

With a projected 20 million visitors, Milan Expo 2015 offers an excellent opportunity to inform, inspire and persuade foreign audiences about the United States, its people and values, and to promote broad U.S. commercial interests around the world. U.S. participation in Milan Expo 2015 will confirm the strength and importance of U.S.-Italy bilateral ties and promote mutual understanding between Americans and foreign visitors.

Content

Milan Expo 2015 will be a stage on which participants from all over the world showcase the most innovative solutions to the problems of the Expo's theme of ''Feeding the Planet, Energy for Life.''

''The Expo will be the largest worldwide event to discuss issues related to food production, availability, nutrition and the culture of food.''

The theme for the USA Pavilion Exhibition should be directly linked to the overall theme of the Expo. EUR would welcome proposals for an exhibition to showcase American expertise, best practices and trends in some or all of the following areas:

Food Security

Sustainable Intensification of Agriculture
The Role of Technology and Innovation in Food Production and Environmental Sustainability
Food Security and Global Trade: Economic Systems, Markets and Rules
Improving Efficiency of Food Systems and Reducing Food Loss
The Role of Human Labor
Nutrition/Eradicating Hunger

Food Safety

Food and Health
Research and Technology
Food Education

Sustainability

Biodiversity
Technologies, Nature and Traditions
Water
Energy

Food, Peace And Culture

Food Security as a Resource for Peace
The Role of Women in Agriculture
Food in Art, Culture, and Social and Regional Trends
Community Driven Approaches/ Contributions to Food Security

Energy For Life

Bio-energy
Technologies Driving U.S. Energy Production
U.S. Energy Policy

The design concept for the USA Pavilion and exhibition should appeal to a general, non-expert audience.

The USA Pavilion at Expo 2015 Milan will be an official representation of the United States. EUR, therefore, must ensure that the U.S. exhibition is nonpolitical in nature, of the highest possible quality, balanced and representative of the diversity of American political, social and cultural life. The USA Pavilion and exhibition must maintain the highest level of scholarly integrity and meet the highest standards of artistic achievement and academic excellence.

The USA Pavilion will be used to promote U.S. commercial interests as well as highlight outstanding U.S. cultural, scientific, educational and artistic achievement. The proposed design for the USA Pavilion should include functional space for four purposes: an exhibition area(s); a food demonstration or exhibition/gift shop area; a VIP hospitality area, and administrative/staff area.

Further information on the Expo 2015 Milan can be found at the official expo Web site: *http://en.expo2015.org.*

Student Ambassadors

Proposals must include a plan for funding and managing student ''ambassadors'' (guides) at the USA Pavilion. All student ambassadors must be U.S. Citizens, from a diverse set of backgrounds and U.S. States, and fluent in Italian with two or more years of college-level language training or equivalent ability gained through family or residence in Italy. Experience has shown that it is highly advantageous to have a student ambassador program run in conjunction with a U.S.-based college or university.

Funding Limitations

Section 204 of Public Law 106–113 (22 U.S.C. 2452b) limits the support the Department of State may provide for U.S. participation in international expositions registered by the Bureau of International Expositions (BIE). This includes Milan Expo 2015. This Request for Proposals is intended to help identify a private U.S. individual, firm or organization interested in, and capable of providing a complete pavilion/exhibit at Milan Expo 2015 as a gift to the United States Government. The Department of State is not now authorized, and does not in the future intend to seek authorization from the U.S. Congress, to provide federal funding for any aspect of the U.S. exhibition at the Milan Expo 2015.

Costs

The USA Pavilion will be situated on a 2,790 square meter plot with a building footprint no more than 70% of the plot size. Excluding the area required for setbacks, the total lot size would be 2,032 square meters. The total green and open area would be at least 1,367 square meters. The building can be no more than 1,423 square meters, and the USA Pavilion could be comprised of one or more buildings. The building(s) may be enclosed or open-air. Light structures are encouraged, and the building(s) could have two floors. Overall building height—that is, both floors together—must be less than 12 meters. The height limit for any additional architectural elements (such as skylights, roof elements, vertical connections to the roof, sunscreens, signals, etc.) is 17 meters and roofs may be used as reception or exhibition spaces.

It is estimated that a representative USA Pavilion in that space will cost between $25 million and $45 million, depending on final design, construction and programming).

Costs would include, but not be limited to:

Design and construction of a building to house the exhibition and provide an appealing welcome on the exterior facade; provide exterior landscaping; incorporate appropriate internal and external crowd control features;

Design of the exhibition; development of the story line;

Raising all necessary funds;

Production of exhibits, audio-visual materials, films, DVDs, videos, posters and other promotional materials needed for the exhibit;

Promote and advertise the USA Pavilion;

Manage all administrative, personnel and exhibit costs, including salaries, benefits, staff housing expenses, contracting and supplier costs and consulting fees as well as funding associated with guides, escorts, and protocol gifts;

Transport, travel, insurance, postage and shipping fees;

Security, development and implementation of a security program for the USA Pavilion in consultation with the State Department and appropriate Italian authorities;

Tear-down, including removal of exhibits, and return of the pavilion lot in the condition required by the Expo organizers;

Cultural and informational programs associated with the exhibition, including, but not limited to, production of U.S. National Day activities;

Funding all expenses associated with the U.S. Commissioner General; and,

Creation and staffing of facilities devoted to hosting all VIPs visiting the USA Pavilion.

Expo Guidelines

Interested parties may obtain information regarding the

General Regulations and Expo Guidelines from: Barry Levin, Coordinator, Milan Expo 2015, Room 3249, Bureau of European and Eurasian Public Affairs, U.S. Department of State, Washington, DC 20520, Tel. (202) 647–8801, *Email: levinbj@state.gov.*

Application and Submission Information

Proposals

Proposals should be provided in a narrative of no more than twenty (20) pages, single-spaced, plus a detailed budget with necessary attachments and/or exhibits. The narrative and additional documents should outline, in as much detail as possible, plans for providing a pavilion and exhibition for the United States Government at Milan Expo 2015.

Proposals should address the following:

Willingness to adhere to the General Regulations of Milan Expo 2015 as stipulated by the Expo organizers, including restrictions and limitations related to construction;

Prior experience working with exhibitions and on the proposed theme;

An institutional record of successful fundraising, and responsible fiscal management;

Detailed fundraising plan listing intended individuals and institutions to be approached, description of donation and sample donation agreement;

Detailed budget showing breakdown of budget items required for each aspect of the project development and implementation;

Timeline detailing each step in the fundraising, design, construction, and breakdown of the USA Pavilion as well as the development of the USA Pavilion content;

Clear concept for the exhibit plan and storyline;

Experienced staff with language facility, and;

Commitment to consult closely with and follow the guidance of the Bureau of European And Eurasian Public Affairs (EUR/PD) and U.S. diplomatic officers in Italy.

Proposals should state clearly that the design concept and all materials developed specifically for the project will be subject to review and approval by EUR/PD.

Eligible applicants: Applications may be submitted by public and private organizations (non-profit and profit). Non-profit organizations must meet the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3). Non-profit organizations must have nonprofit status with the IRS at the time of application. If your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status. Failure to do so will cause your proposal to be declared technically ineligible.

Requesting an Application Package

Please contact the Office of European and Eurasian Public Diplomacy, EUR/PD, Room 3249, U.S. Department of State, 2201 C Street NW., Washington, DC, 20520, tel.: 202–647–8801; fax: 202–647–3614; or email *LevinBJ@state.gov* (with copies to *BerbenaGF@state.gov* and *PetersenML@state.gov)* for assistance.

Please refer to ''EUR/PD-Milan Expo 2015'' when making your request.

General Information Contact: Barry Levin, Coordinator, telephone: 202–747–8801, fax: 202–647–3614 or email: *levinbj@state.gov.*

Application Deadline and Methods of Submission:

Application Deadline Date: Midnight, Sunday, September 15.

Reference: EUR/PD-Milan Expo 2015.

Submitting Applications

Due to heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (i.e., DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.)and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at EUR more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to EUR via the Internet. EUR will not notify you upon receipt of your application. Delivery of proposal packages may not be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered. Applications may not be submitted electronically.

The original and ten copies of the application should be sent to: U.S. Department of State, Office of European and Eurasian Public Affairs, Ref.: EUR/PD Milan Expo 2015, EUR/PD, Room 3249, 2201 C Street NW., Washington, DC 20520.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in text (.txt) format on a PC-formatted disk. The Bureau will provide these files electronically to the U.S. Mission in Italy for review.

Application Review Information

Review Process

U.S. citizen, corporation or U.S.-based organization and do not fully adhere to the General Regulations of the Milan Expo 2015 and the guidelines stated herein.

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. The program office, as well as relevant elements of the U.S. Mission in Italy will review all eligible proposals. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines. A panel of senior U.S. Government employees and private sector experts will review eligible proposals. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. The final decision on a potential U.S. private sector partner will be at the discretion of the Department of State's Assistant Secretary for European and Eurasian Affairs.

Review Criteria

Technically eligible proposals will be reviewed according to the criteria stated below. These criteria are not rank-ordered and all carry equal weight in the evaluation.

1. Program planning to achieve exhibit objectives: Proposals should clearly demonstrate how the planned exhibit will educate and inform foreign audiences about the United States and its people and promote broad U.S. commercial interests around the world, as well as how specifically it will address the theme and General Regulations of the Expo. Exhibit objectives should be reasonable, feasible, and flexible.

The general concept for the pavilion structure should include four basic areas: an exhibition area, a food demonstration or exhibition/gift shop area, a VIP hospitality area, and administration/staff lounge area. The proposal should contain a detailed timeline and budget as well as information regarding substantial prior projects that demonstrate fundraising and logistical capacity.

2. Institutional Capacity/Record/Ability: Proposed personnel and institutional resources should be defined and adequate and appropriate to achieve the exhibit's goals. Proposals

should demonstrate an institutional record of successful exhibit activities, including responsible fiscal management and full compliance with all BIE-registered Expo requirements. EUR will give serious weight to past performance and demonstrated potential of the staffing proposed for the project.

3. Multiplier effect/impact: Proposals should clearly state how exhibit content and related activities will strengthen long-term mutual understanding between the United States and Italy, and present a positive U.S. image to the international audience.

4. Support of Diversity: Proposals should demonstrate how plans will address EUR's requirement to encourage the involvement of participants from all traditionally underrepresented groups including women, racial and ethnic minorities and people with disabilities.

5. Monitoring and Project Evaluation Plan: Proposals that include a plan to measure the impact of the proposed U.S. exhibition, cultural and information programs are encouraged.

6. Cost-effectiveness: Proposals must include a proposed action plan and timeline for all aspects of the project with associated budget estimates. Proposals must also present a credible fundraising plan to fund all aspects of the USA Pavilion project. Note that prospective donors will be vetted with the State Department for potential conflict of interest.

Reporting Requirements for Chosen Exhibitor

You must provide EUR/PD with a hard copy original plus two copies of the following reports:

1. Program and financial reports every 90 days after the signature of the Memorandum of Understanding.

2. Final program and financial reports no more than 90 days after the expiration of the award;

For Questions About This Announcement, Contact

The Office of European and Eurasian Public Affairs, EUR/PD, Room 3249, Milan Expo 2015, U.S. Department of State, 2201 C Street NW., Washington, DC, 20520; Attention: Barry Levin; Tel.: 202–647–8801; Fax: 202–647–3614; Email: *levinbj@state.gov.*

Correspondence with the Office concerning this RFP should reference: EUR/PD-Milan Expo 2015.

Notice

The terms and conditions published in this Request for Proposals are binding and may only be modified in writing. Explanatory information provided by EUR that contradicts published language will not be binding. Issuance of this RFP does not constitute an intention to agree to work with any private sector exhibitor at the Milan Expo 2015. EUR reserves the right to select the U.S. private sector partner for Milan Expo 2015 and to approve all elements of the exhibition and project. Decisions made based on indications of interest submitted in response to this RFP will be made in the sole discretion of EUR and will be final.

Dated: July 22, 2013.

Paul Jones,

Acting Assistant Secretary, Bureau of European and Eurasian Affairs, U.S. Department of State.

[FR Doc. 2013–18171 Filed 7–26–13; 8:45 am]

BILLING CODE 4710–23–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP): Notice of Initiation of the 2013 Annual GSP Product and Country Practices Review; Deadlines for Filing Petitions

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of procedures for submission of petitions from the public.

SUMMARY: This notice announces that the Office of the United States Trade Representative (USTR) is prepared to receive petitions to modify the list of products that are eligible for duty-free treatment under the GSP program and to modify the GSP status of certain GSP beneficiary developing countries because of country practices. USTR is also prepared to receive petitions requesting waivers of competitive need limitations (CNLs).

DATES: The GSP regulations (15 CFR part 2007) provide the timetable for conducting an annual review, unless otherwise specified by notice in the **Federal Register**. Notice is hereby given that, in order to be considered in the 2013 Annual GSP Review, relevant petitions must be received by the GSP Subcommittee of the Trade Policy Staff Committee by the following deadlines:

October 4, 2013: Petitions to modify the list of articles eligible for duty-free treatment under GSP or to review the GSP status of any beneficiary developing country must be received by 5:00 p.m.

November 22, 2013: Petitions requesting waivers of CNLs must be received by no later than 5:00 p.m.

Petitions submitted after the above listed deadlines will not be considered for review. Decisions on which petitions are accepted for review, along with a schedule for any related public hearings and the opportunity for the public to provide comments will be announced at a later date.

Note: The specified deadlines for petitions will remain valid, and USTR will continue to receive submitted petitions, even if authorization of the GSP program lapses on July 31, 2013. However, no further action will be taken on any petition that is submitted as long as the GSP program is not in effect.

ADDRESSES: Public comments should be submitted electronically to *www.regulations.gov* in docket number USTR–2013–0024.

FOR FURTHER INFORMATION CONTACT: Tameka Cooper, GSP Program, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20508. The telephone number is (202) 395–6971, the fax number is (202) 395–9674, and the email address is *Tameka_Cooper@ustr.eop.gov*.

SUPPLEMENTARY INFORMATION:

The 2013 Annual GSP Review

GSP Product Review Petitions: Interested parties, including foreign governments, may submit petitions to: (1) Designate additional articles as eligible for GSP benefits, including to designate articles as eligible for GSP benefits only if imported from countries designated as least-developed beneficiary developing countries, or only from countries designated as beneficiary sub-Saharan African countries under the African Growth and Opportunity Act (AGOA); (2) withdraw, suspend or limit the application of duty-free treatment accorded under the GSP with respect to any article; (3) waive the CNL for individual beneficiary developing countries with respect to specific GSP-eligible articles (these limits do not apply to least-developed beneficiary developing countries or AGOA beneficiary countries); and (4) otherwise modify GSP coverage.

As specified in 15 CFR 2007.1, all product petitions must include, *inter alia,* a detailed description of the product and the eight-digit subheading of the Harmonized Tariff Schedule of the United States (HTSUS) under which the product is classified. Before submitting petitions for CNL waivers, prospective petitioners may wish to review the year-to-date import trade data for products of interest. This data is available via the U.S. International Trade Commission's ''Dataweb'' database at *http://dataweb.usitc.gov/*.

Country Practices Review Petitions: Any interested party may submit a

petition to review the GSP eligibility of any beneficiary developing country with respect to any of the designation criteria listed in sections 502(b) or 502(c) of the Trade Act (19 U.S.C. 2462(b) and (c)).

Requirements for Submissions

All submissions for the GSP Annual Review must conform to the GSP regulations set forth at 15 CFR part 2007, except as modified below. These regulations are available on the USTR Web site at *http://www.ustr.gov/trade-topics/trade-development/preference-programs/generalized-system-preference-gsp/gsp-program-inf*.

All submissions in response to this notice must be in English and must be submitted electronically via *http://www.regulations.gov,* using docket number USTR–2013–0024. Hand-delivered submissions will not be accepted. Submissions that do not provide the information required by sections 2007.0 and 2007.1 of the GSP regulations will not be accepted for review, except upon a detailed showing in the submission that the petitioner made a good faith effort to obtain the information required.

To make a submission via *http://www.regulations.gov,* enter docket number USTR–2013–0024 on the home page and click ''Search.'' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting ''Notice'' under ''Document Type'' on the left side of the screen and click on the link entitled ''Submit a Comment.'' (For further information on using the *www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on ''How to Use This Site'' on the left side of the home page.)

The *http://www.regulations.gov* Web site allows users to provide comments by filling in a ''Type Comment'' field or by attaching a document using the ''Upload file(s)'' field. The GSP Subcommittee prefers that submissions be provided in an attached document. Submissions must include, at the beginning of the submission, or on the first page (if an attachment), the following text (in bold and *underlined*): (1) ''2013 GSP Annual Review''; and (2) the eight-digit HTSUS subheading number in which the product is classified (for product petitions) or the name of the country (for country practice petitions). Furthermore, interested parties submitting petitions that request action with respect to specific products should also list at the beginning of the submission, or on the first page (if an attachment) the following information: (1) The requested action; and (2) if applicable, the beneficiary developing country. Submissions should not exceed 30 single-spaced, standard letter-size pages in 12-point type, including attachments. Any data attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Each submitter will receive a submission tracking number upon completion of the submissions procedure at *http://www.regulations.gov*. The tracking number will be the submitter's confirmation that the submission was received into *http://www.regulations.gov*. The confirmation should be kept for the submitter's records. USTR is not able to provide technical assistance for the Web site. Documents not submitted in accordance with these instructions may not be considered in this review. If an interested party is unable to provide a submission at *www.regulations.gov,* please contact Tameka Cooper at (202) 395–6971 to arrange for an alternative method of transmission.

Business Confidential Petitions

An interested party requesting that information contained in a submission be treated as business confidential information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such. The submission must be marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of the cover page and each succeeding page, and the submission should indicate, via brackets, the specific information that is confidential. Additionally, ''Business Confidential'' must be included in the ''Type Comment'' field. For any submission containing business confidential information, a non-confidential version must be submitted separately (*i.e.,* not as part of the same submission with the confidential version), indicating where confidential information has been redacted. The non-confidential version will be placed in the docket and open to public inspection.

Public Viewing of Review Submissions

Submissions in response to this notice, except for information granted ''business confidential'' status under 15 CFR 2003.6, will be available for public viewing pursuant to 15 CFR 2007.6 at *http://www.regulations.gov* upon completion of processing. Such submissions may be viewed by entering the docket number USTR–2013–0024 in the search field at *http://www.regulations.gov*.

William D. Jackson,

Deputy Assistant U.S. Trade Representative for the Generalized System of Preferences, Office of the U.S. Trade Representative.

[FR Doc. 2013–18069 Filed 7–26–13; 8:45 am]

BILLING CODE 3290–F3–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Modification of the Harmonized Tariff Schedule of the United States for Certain Cheeses

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: This document modifies Additional U.S. Notes 2, 16, 17, 18, 19, 20, 21, 22, 23, and 25 to Chapter 4 of the Harmonized Tariff Schedule of the United States (HTS) to reflect the enlargement of the European Union to 27 countries on January 1, 2007.

DATES: *Effective Date:* This modification is effective on September 1, 2013.

FOR FURTHER INFORMATION CONTACT: Mark Mowrey, Deputy Assistant U.S. Trade Representative for Eurasia and the Middle East, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20508; telephone (202) 395–4620.

SUPPLEMENTARY INFORMATION: On January 1, 2007, Bulgaria and Romania acceded to the European Union (EU), and the EU customs union of 25 member countries (''EU–25'') was enlarged to a customs union of 27 member countries (''EU–27''). At that time, Bulgaria and Romania withdrew their tariff schedules under the World Trade Organization (WTO) and applied the common external tariff of the EU–25 to imports into the EU–27. To recognize the membership of Bulgaria and Romania in the EU–27, the tariff-rate quota (TRQ) allocations for certain cheeses from the EU–25 will be available to the EU–27.

Section 404(d)(3) of the Uruguay Round Agreements Act (URAA) (10 U.S.C. 3601(d)(3)) authorizes the President to allocate in-quota quantities of a TRQ for any agricultural product among supplying countries or customs areas and to modify any allocation as the President determines appropriate. Section 604 of the Trade Act of 1974, as amended (''Trade Act'')(19 U.S.C. 2483) authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other Acts affecting import treatment, and actions

thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

In paragraph (3) of Proclamation 6763 of December 23, 1994, the President delegated his authority under section 404(d)(3) of the URAA to the United States Trade Representative (USTR). In paragraph (2) of Proclamation 6914 of August 26, 1996, the President determined that it is appropriate to authorize the USTR to exercise his authority under section 604 of the Trade Act to embody in the HTS the substance of any action taken by USTR under section 404(d)(3) of the URAA.

Modification of the HTS

Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after September 1, 2013:

1. Additional U.S. note 2 to chapter 4 is modified by: Deleting from such note the expression ''EC 25'' and inserting in lieu thereof the expression ''EU 27''. Inserting into the list of countries in such note the terms ''Bulgaria,'' and ''Romania,'', such that the entire list is maintained in alphabetical order.

2. Additional U.S. note 16 to chapter 4 is modified by: Deleting from the list in such note the expression ''EC 25'' and inserting in lieu thereof the expression ''EU 27''. Deleting the sentence immediately following the list in said note and inserting the following sentence in lieu thereof: ''Of the quantitative limitations provided for in this note for the EU 27, Portugal shall have access to a quantity of not less than 353,000 kilograms.''

3. Additional U.S. note 17 to chapter 4 is modified by: Deleting from the list in such note the expression ''EC 25'' and inserting in lieu thereof the expression ''EU 27''.

4. Additional U.S. note 18 to chapter 4 is modified by: Deleting from the list in such note the expression ''EC 25'' and inserting in lieu thereof the expression ''EU 27''.

5. Additional U.S. note 19 to chapter 4 is modified by: Deleting from the list in such note the expression ''EC 25'' and inserting in lieu thereof the expression ''EU 27''.

6. Additional U.S. note 20 to chapter 4 is modified by: Deleting from the list in such note the expression ''EC 25'' and inserting in lieu thereof the expression ''EU 27''.

7. Additional U.S. note 21 to chapter 4 is modified by: Deleting from the list in such note the expression ''EC 25'' and inserting in lieu thereof the expression ''EU 27''.

8. Additional U.S. note 22 to chapter 4 is modified by: Deleting from the list in such note the expression ''EC 25'' and inserting in lieu thereof the expression ''EU 27''.

9. Additional U.S. note 23 to chapter 4 is modified by: Deleting from the list in such note the expression ''EC 25'' and inserting in lieu thereof the expression ''EU 27''.

10. Additional U.S. note 25 to chapter 4 is modified by: Deleting from the list in such note the expression ''EC 25'' and inserting in lieu thereof the expression ''EU 27''.

Michael B.G. Froman,

United States Trade Representative.

[FR Doc. 2013–18154 Filed 7–26–13; 8:45 am]

BILLING CODE 3290–F3–P

DEPARTMENT OF TRANSPORTATION

Industry Forums on the Next ITS Strategic Plan; Notice of Public Meeting

AGENCY: ITS Joint Program Office, Research and Innovative Technology Administration, U.S. Department of Transportation.

ACTION: Notice.

The U.S. Department of Transportation (USDOT) Intelligent Transportation System Joint Program Office (ITS JPO) will participate in four industry forums by facilitating workshops to generate feedback for the next ITS Strategic Plan (2015–2019). The workshops are designed to generate ideas and collect viewpoints on multiple areas of interest including multi-modal operations, planning, pricing, standards and architecture, education and training, and connected vehicles. The ITS JPO will lead participants in a fast paced, interactive discussion that will involve hands-on application of critical thinking tools designed to draw out information to identify and validate focus areas for the next ITS Strategic Plan. The ITS JPO also offers an opportunity for the public to share ideas and inputs through an online tool, IdeaScale at *http://itsstrategicplan.ideascale.com.*

- The first facilitated session will take place August 5, 2013 at the Annual Meeting of the Institute of Transportation Engineers (ITE) in the Hynes Convention Center in Boston, MA. Persons planning to attend this ITS JPO workshop should register online no later than July 26, 2013 at *http://www.itsa.org/strategicplanwebinar.*
- The second facilitated session will take place August 27, 2013 at the 2013 National Rural ITS Conference (NRITS) in the Rivers Edge Convention Center in St. Cloud, MN. Persons planning to attend this ITS JPO workshop should register online no later than August 13, 2013 at *http://www.itsa.org/strategicplanwebinar.*
- The third facilitated session will take place September 2, 2013 at the IEEE Vehicle Technology Conference at the Wynn Hotel (Encore) in Las Vegas, NV. Persons planning to attend this ITS JPO workshop should register online no later than August 19, 2013 at *http://www.itsa.org/strategicplanwebinar.*
- The last facilitated session will take place September 24–26, 2013 at the Connected Vehicle Public Meeting at the Holiday Inn in Arlington, VA. Persons planning to attend this ITS JPO workshop should register online no later than September 13, 2013 at *http://www.itsa.org/strategicplanwebinar.*

Issued in Washington, DC, on the 23rd day of July 2013.

John Augustine,

Managing Director, ITS Joint Program Office.

[FR Doc. 2013–18020 Filed 7–26–13; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Surplus Property Release at Huntsville International Airport, Huntsville, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on land release request.

SUMMARY: Under the provisions of Title 49, U.S.C. 47153(c), notice is being given that the FAA is considering a request from the Huntsville-Madison County Airport Authority to waive the requirement that a 4.58-acre parcel of surplus property, located at the Huntsville International Airport, be used for aeronautical purposes.

DATES: Comments must be received on or before August 28, 2013.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Luther H. Roberts, Jr., Deputy Director at the following address: Huntsville-Madison County Airport Authority, 1000 Glenn Hearn Boulevard, Huntsville, AL 35824

FOR FURTHER INFORMATION CONTACT: Roderick T. Nicholson, Program Manager, Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307, (601)664–9884. The land release request may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by the Huntsville-Madison County Airport Authority to release 4.58 acres of surplus property at the Huntsville International Airport. The property will be purchased by the Alabama Department of Transportation (ALDOT), which is a state transportation organization. The property released will be used for the interchange project off Interstate Route 565. The net proceeds from the sale of this property will be used for FAA approved airport purposes.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the office of the Huntsville-Madison County Airport Authority.

Issued in Jackson, Mississippi on July 19, 2013.

Rans D. Black,

Manager, Jackson Airports District Office, Southern Region.

[FR Doc. 2013–18131 Filed 7–26–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA—2013–0040]

Proposed Memorandum of Understanding (MOU) Assigning Environmental Responsibilities to the State of Texas for Categorical Exclusions

AGENCY: Federal Highway Administration (FHWA), Texas Division Office, DOT.

ACTION: Notice of proposed MOU and request for comments.

SUMMARY: This notice announces that the FHWA and the Texas Department of Transportation (State) have developed a proposed MOU, pursuant to 23 U.S.C. 326, under which the FHWA would assign to the State the FHWA's responsibility for determining whether a project is categorically excluded from preparation of an environmental assessment or an environmental impact statement under the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq. (NEPA), and for carrying out certain other responsibilities for conducting environmental reviews, consultations, and related activities for Federal-aid highway projects. The public is invited to comment on any aspect of the proposed MOU, including the proposed designations of categorical exclusions and scope of environmental review, consultation and other activities to be assigned.

DATES: Please submit comments by August 28, 2013.

ADDRESSES: You may submit comments, identified by DOT Document Management System (DMS) Docket Number FHWA–2013–0040, by any of the methods described below. Electronic or facsimile comments are preferred because Federal offices experience intermittent mail delays from security screening.

1. *Web site: http://www.regulations.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.
2. *Facsimile (Fax):* 1–202–493–2251.
3. *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590.
4. *Hand Delivery:* 1200 New Jersey Ave. SE., Washington, DC 20590 between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

For access to the docket to view a complete copy of the proposed MOU, or to read background documents or comments received, go to *http://www.regulations.gov* at any time or to 1200 New Jersey Ave. SE., Washington, DC 20590, between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except for Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Michael T. Leary, Director of Planning and Program Development, Federal Highway Administration Texas Division, 300 E. 8 St., Room 826, Austin, TX 78701, 7:00 a.m.—4:30 p.m. (CST), (512) 536–5940, *michael.leary@dot.gov*.

Carlos H. Swonke, P.G., Director Environmental Affairs Division, Texas Department of Transportation, 125 E. 11th St., Austin, TX 78701, 8:00 a.m.—5: p.m. (CST), (512) 416–2734, *carlos.swonke@txdot.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this notice may be downloaded using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.archives.gov* and the Government Printing Office's Web site at *http://www.access.gpo.gov*. An electronic version of the proposed MOU may be downloaded by accessing the DOT DMS docket, as described above, at *http://www.regulations.gov/*.

Background

Section 326 of title 23, United States Code (23 U.S.C. 326), allows the Secretary of the DOT (Secretary), to assign, and a State to assume, responsibility for determining whether certain designated activities are included within classes of action that are categorically excluded from requirements for environmental assessments or environmental impact statements pursuant to regulations promulgated by the Council on Environmental Quality under part 1500 of title 40, Code of Federal Regulations (CFR) (as in effect on October 1, 2003). The FHWA is authorized to act on behalf of the Secretary with respect to these matters.

Under the proposed MOU, the FHWA would assign to the State the responsibility for making decisions on the following types of categorical exclusions:

1. Activities listed in 23 CFR 771.117(c);
2. Activities listed in 23 CFR 771.117(d).

The assignment also would give the State the responsibility to conduct the following environmental review, consultation, and other related activities:

1. Air Quality

- Clean Air Act (CAA), 42 U.S.C. 7401–7671q. *Any determinations that do not involve conformity.*

2. Noise

- Compliance with the noise regulations in 23 CFR 772.

3. Wildlife

- Section 7 of the Endangered Species Act of 1973, 16 U.S.C. 1531–1544, and Section 1536
- Marine Mammal Protection Act, 16 U.S.C. 1361
- Anadromous Fish Conservation Act, 16 U.S.C. 757a–757g
- Fish and Wildlife Coordination Act, 16 U.S.C. 661–667d
- Migratory Bird Treaty Act, 16 U.S.C. 703–712
- Magnuson-Stevens Fishery Conservation and Management Act of

1976, as amended, 16 U.S.C. 1801 et seq., with Essential Fish Habitat requirements at 1855(b)(1)(B)

4. Historic and Cultural Resources

- Section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470(f) et seq.
- 23 U.S.C. 138 and Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. 303 and implementing regulations at 23 CFR Part 774
- Archeological Resources Protection Act of 1977, 16 U.S.C. 470(aa)–11
- Archeological and Historic Preservation Act of 1966, as amended, 16 U.S.C. 469–469(c)
- Native American Grave Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001–30131

5. Social and Economic Impacts

- American Indian Religious Freedom Act, 42 U.S.C. 19961
- Farmland Protection Policy Act (FPPA), 7 U.S.C. 4201–4209

6. Water Resources and Wetlands

- Clean Water Act, 33 U.S.C. 1251–1377
  - Section 404, Section 401, Section 319
- Coastal Barrier Resources Act, 16 U.S.C. 3501–3510
- Coastal Zone Management Act, 16 U.S.C. 1451–1465
- Safe Drinking Water Act (SDWA), 42 U.S.C. 300f–300j–6
- Section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. 401–406
- Section 9 of the Rivers and Harbors Act of 1899,(General Bridge Act) Navigability Determinations and Lighting Exemption Waivers
- Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287
- Emergency Wetlands Resources Act, 16 U.S.C. 3921, 3931
- TEA–21 Wetlands Mitigation, 23 U.S.C. 103(b)(6)(m), 133 (b)(11)
- Flood Disaster Protection Act, 42 U.S.C. 4001–4128

7. Parklands

- Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. 303
- Land and Water Conservation Fund (LWCF) Act, 16 U.S.C. 4601–4

8. Hazardous Materials

- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601–9675
- Superfund Amendments and Reauthorization Act of 1986 (SARA)
- Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901–6992k

9. Executive Orders Relating to Highway Projects

- E.O. 11990, Protection of Wetlands
- E.O. 11988, Floodplain Management
- E.O. 12898, Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations
- E.O. 13112, Invasive Species

The MOU would allow the State to act in the place of the FHWA in carrying out the functions described above, except with respect to government-to-government consultations with federally-recognized Indian tribes. The FHWA will retain responsibility for conducting formal government-to-government consultation with federally recognized Indian tribes, which is required under some of the listed laws and executive orders. The State will continue to handle routine consultations with the tribes and understands that a tribe has the right to direct consultation with the FHWA upon request. The State also may assist the FHWA with formal consultations, with consent of a tribe, but the FHWA remains responsible for the consultation.

A copy of the proposed MOU may be viewed on the DOT DMS Docket, as described above, or may be obtained by contacting the FHWA or the State at the addresses provided above. A copy also may be viewed on the State's Web site at *www.txdot.gov.*

The FHWA Texas Division, in consultation with FHWA Headquarters, will consider the comments submitted when making its decision on the proposed MOU revision. Any final MOU approved by FHWA may include changes based on comments and consultations relating to the proposed MOU. Once the FHWA makes a decision on the proposed MOU, the FHWA will place in the DOT DMS Docket a statement describing the outcome of the decision-making process and a copy of any final MOU. Copies of those documents also may be obtained by contacting the FHWA or the State at the addresses provided above, or by viewing the documents at the State's Web site at *www.txdot.gov.*

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 326; 42 U.S.C. 4331, 4332; 23 CFR 771.117; 40 CFR 1507.3, 1508.4.

Issued on: July 24, 2013.

Michael T. Leary,

Director of Planning and Program Development, FHWA, Austin, Texas.

[FR Doc. 2013–18115 Filed 7–26–13; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2008–0176; Notice 2]

Adrian Steel Company, Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of petition grant.

SUMMARY: Adrian Steel Company (Adrian), on behalf of Commercial Truck and Van Equipment, Inc. (CTV), determined that certain Model Year 2006–2008 incomplete vehicles that CTV completed as trucks did not fully comply with paragraphs S4.3(a), S4.3(c) and S4.3(d) of 49 CFR 571.110, Federal Motor Vehicle Safety Standard (FMVSS) No. 110, *Tire Selection and Rims for Motor Vehicles with a GVWR of 4,536 Kilograms (10,000 pounds) or Less.* Adrian has filed an appropriate report dated June 10, 2008 pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports.*

Pursuant to 49 U.S.C. 30118(d) and 30120(h), and 49 CFR Part 556, on June 10, 2008, Adrian submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. 30118 and 30120 on the basis that this noncompliance is inconsequential to motor vehicle safety. NHTSA published a notice of receipt of the petition, with a 30-day public comment period, on December 10, 2008, in the **Federal Register**, 73 FR 75171. In response to the petition, NHTSA did not receive any comments. To view the petition and all supporting documents, log onto the Federal Docket Management System (FDMS) Web site at: *http://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2008–0176.''

FOR FURTHER INFORMATION CONTACT: For further information on this decision, contact Mr. Harry Thompson, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–5289, facsimile (202) 366–5930.

Relevant Requirements of FMVSS No. 110: Among other things, FMVSS No. 110 requires certain information to be specified on the tire and loading

information placard. The required information includes the vehicle capacity weight expressed as ''The combined weight of occupants and cargo should never exceed XXX kilograms or XXX pounds'', the vehicle manufacturer's recommended cold tire inflation pressure for front, rear, and spare tires, and the tire size designation, including spare tires.

Vehicles Involved: Affected are approximately 7,761 Model Years 2006–2008 General Motors Chevrolet Cargo Uplander GMT201 platform incomplete vehicles that CTV, as the final stage manufacturer, completed as trucks. CTV completed these vehicles during the period September 1, 2005 through June 4, 2008.

Summary of Adrian's Petition: Adrian explained that several noncompliances with FMVSS No. 110 exist due to errors and omissions on the tire and loading information placard that it affixed to the vehicles. Adrian identified the noncompliances as follows:

1. Paragraph S4.3(a) requires that the vehicle capacity weight be stated on the vehicle tire and loading information placard in Metric and English units. The Metric value (646 kg) is correct but the English conversion value (5,797 lb) is not correct.

2. Paragraph S4.3(c) requires that the recommended tire inflation pressures be stated on the vehicle tire and loading information placard for the original tires including the spare tire, and, by the example in FMVSS No. 110 (Figure 1), be stated in both Metric (KPA) and English (PSI) units. The inflation pressures on the vehicle tire and loading information placard appear to be the English value only with no units identified, and no inflation pressure is provided for the spare tire.

3. Paragraph S4.3(d) requires that the original tire sizes (including the spare) be stated on the vehicle tire and loading information placard. The information in the tire size column is rim size information, rather than the tire size. NHTSA notes that no tire size information is provided for the spare tire.

Furthermore, 49 CFR Part 567, *Certification* requires that the vehicle type classification (e.g., truck, multipurpose passenger vehicle, bus, trailer) be specified on the vehicle certification label. The certification labels specify a vehicle type classification of ''Van'' which is not a classification type recognized by the agency.

Summary of why Adrian Steel believes that the identified noncompliances are inconsequential to motor vehicle safety:

Adrian Steel believes that the tire and loading information placard is duplicated by the vehicle certification label (required by 49 CFR Part 567) because it also provides the appropriate information for an owner to understand tire inflation pressures, tire size and load ratings. Specifically:

1. 49 CFR 571.110, paragraph S4.3(a) requires that the vehicle capacity weight be stated on the tire and loading information placard in Metric and English units. Although the English units had been converted incorrectly (listed at 5797 lbs.), the Metric measure, 646 kg, was correct on the tire and loading information placard. Also, the vehicle certification label correctly identifies the GVWR so that the safe gross vehicle weight rating is clearly identified. Furthermore, Adrian sent 8076 postcards to the owners of affected vehicles, based on addresses provided by R.L. Polk. The postcards stated that the vehicle capacity weight in English units was 1,425 pounds rather than 5,797 pounds as stated on the placard. Only 26 postcards were returned as undeliverable.

2. 49 CFR 571.110, paragraph S4.3(c) requires that the recommended tire inflation pressures be stated on the tire and loading information placard for the original tires, in both Metric and English units. The inflation pressure of ''35'' was identified on the tire and loading information placard but the unit of measure was not included; however, it is included on the vehicle certification label, which is mounted on the vehicle's B pillar adjacent to the tire and loading information placard. Since the tire inflation pressure is clearly identified on the vehicle certification label, the information is available to the owner.

3. 49 CFR 571.110, paragraph S4.3(d) requires that the original tire sizes be stated on the tire and loading information placard. Adrian placed the rim size on the tire and loading information placard, rather than the tire size. However, the tire size is clearly identified on the vehicle certification label along with the rim size. In addition, it would be impossible to mount a tire on the vehicle using the rim numbers as a tire size.

4. The vehicle certification label which is mounted on the vehicle next to the tire and loading information placard contained the correct English and Metric information for tire size, tire pressure, and GVWR but had a vehicle type identified as ''van'' rather than ''truck''. While this classification ''van'' is not recognized by the agency, Adrian believes that this is inconsequential to motor vehicle safety.

Adrian stated that its Customer Care Center has never received a call or communication of any type with regard to the tire and loading information placard or the vehicle certification label.

Adrian first became aware of the noncompliance when it was contacted by NHTSA in response to a vehicle inspection conducted by NHTSA.

Adrian also informed NHTSA that it has corrected the problem that caused these errors so that they will not be repeated in future production.

In summation, Adrian states that it believes that the described noncompliances of certain Model Year 2006–2008 incomplete vehicles that CTV completed as trucks are inconsequential to motor vehicle safety, and that its petition to exempt it from providing notification of the noncompliances as required by 49 U.S.C. 30118, and remedying the noncompliances as required by 49 U.S.C. 30120, should be granted.

NHTSA's Consideration of Adrian's Inconsequentiality Petition:

General Principles: Federal motor vehicle safety standards are adopted only after the agency has determined, following notice and comment, that the standards are objective and practicable and ''meet the need for motor vehicle safety.'' *See* 49 U.S.C. 30111(a). Thus, there is a general presumption that the failure of a motor vehicle or item of motor vehicle equipment to comply with a FMVSS increases the risk to motor vehicle safety beyond the level deemed appropriate by NHTSA through the rulemaking process. To protect the public from such risks, manufacturers whose products fail to comply with a FMVSS are normally required to conduct a safety recall under which they must notify owners, purchasers, and dealers of the noncompliance and provide a remedy without charge. 49 U.S.C. 30118–30120.

However, Congress has recognized that, under some limited circumstances, a noncompliance could be ''inconsequential'' to motor vehicle safety. ''Inconsequential'' is not defined either in the statute or in NHTSA's regulations. Rather, the agency determines whether a particular non-compliance is inconsequential to motor vehicle safety based on the specific facts before it. The key issue in determining inconsequentiality is whether the noncompliance in question is likely to increase the safety risk to individuals of accidents or to individual occupants who experience the type of injurious event against which the standard was designed to protect. *See General Motors Corp.; Ruling on Petition for Determination of Inconsequential*

Noncompliance, 69 FR 19897 (Apr. 14, 2004).

The intent of FMVSS No. 110 is to ensure that vehicles are equipped with tires that are properly inflated to handle maximum vehicle loads and relevant information to prevent overloading. The display of correct information required by paragraphs S4.3(a), S4.3(c) and S4.3(d) of FMVSS No. 110 provides important information to assist owners and operators in determining safe vehicle loading limits, tire and rim combinations and tire inflation pressures. As discussed below, the missing or incorrect information on the tire and loading placard is available on the adjacent certification label and from the sidewall of the spare tire provided with these vehicles. In addition, as noted above, the noncompliant vehicles are trucks manufactured by CVT based on 2006–2008 Chevrolet Uplander incomplete vehicles. They have a driver and a right hand passenger seat and are used for transporting cargo. The commercial operators of these vehicles are unlikely to be confused by the missing or incorrect information on the vehicle placard. Furthermore, NHTSA has not received any consumer complaints or field reports regarding the subject labels or associated loading issues.

The vehicle capacity weight (S4.3(a)) is directly related to how a motorist might load a vehicle. Vehicle capacity weight is ''the rated cargo and luggage load plus 68 kilograms [150 lbs.] times the vehicle's designated seating capacity.'' 49 CFR 571.110 S3. The metric value for the vehicle capacity weight is correctly specified on the vehicle placard as 646 kg, which equals 1,421 lbs. However, the vehicle capacity weight value stated in pounds as 5,797 lbs. is incorrect, and is much higher than the actual vehicle capacity weight. It is almost the same as the vehicle's gross vehicle weight rating (GVWR) of 5,842 lb., which is correctly identified on the certification label. Accordingly, the English unit vehicle capacity weight value is clearly in error. In the overall context, the agency believes the GVWR value provides sufficient information to the commercial operator such that the vehicles will not be inadvertently overloaded. The subject vehicles are manufactured for commercial use and the agency believes that commercial vehicle operators have a better understanding than non-commercial operators that the certified GVWR values are ratings not to be exceeded. Thus, if the commercial vehicle operator follows the metric vehicle capacity weight value and loads 646 kg of weight into the vehicle the GVWR of the vehicle will not be exceeded. Furthermore, if the operator utilizes the English units value and begins to load 5,797 pounds of cargo into the vehicle, the GVWR value of 5,842 pounds will be reached after approximately 1,500 pounds of cargo are loaded into the vehicle. This value is calculated based on NHTSA's test vehicle, by subtracting the unloaded vehicle weight 4,039 pounds and 300 pounds for two occupants from the vehicle's GVWR 5,842 pounds equals 1,503 pounds. The operator will understand not to exceed the vehicle's GVWR. In view of the GVWR, the stated vehicle capacity weight in pounds is way beyond a plausible number and is unlikely to be given serious consideration. Since the correct vehicle capacity weight value is provided in metric units on the tire and loading information placard, the adjacent certification label specifies the vehicle's correct GVWR, and these vehicles are meant to be owned and operated by commercial entities, the agency believes it is unlikely the erroneous English unit vehicle capacity weight conversion value stated on the vehicle placard will increase the safety risk to the commercial operators of these vehicles.

Recommended tire inflation pressure (S4.3(c)) must be stated on the tire and loading information placard for the original tires, in both metric and English units. The inflation pressure of ''35'' was identified on the tire and loading information placard but the unit of measure was not included. However, the correct pressures both in metric and English units are included on the vehicle certification label, which is mounted on the vehicle's B pillar adjacent to the tire and loading information placard. The agency agrees that since the tire inflation pressure is clearly identified on the vehicle certification label directly adjacent to the tire loading and information placard the inadvertent exclusion of the inflation pressure units on the placard will not likely cause an increased safety risk to individuals.

Tire size designation (S4.3(d)) for the tires installed as original equipment on both the front and rear axles is required to be stated on the tire and loading information placard. Adrian inadvertently placed the rim size on the tire and loading information placard, rather than the tire size. Nevertheless, both the correct tire size and corresponding rim size are clearly identified on the adjacent vehicle certification label. Thus, both tire size and rim size are available to the vehicle operator and it would be unlikely for this error to cause an increased safety risk to individuals.

Adrian did not include spare tire size or inflation pressure information required by S4.3(c) and (d)) on the vehicle tire and loading information placard. FMVSS No. 110 requires that the spare tire included as original equipment be specified on the placard, or if no spare tire is provided the label should specify ''None.'' NHTSA's test vehicle was equipped with a spare tire size T135/70R16, but the affixed placard spare tire entry was left blank. In the agency's judgment, this noncompliance will not cause an increased safety risk to individuals. In the event of a flat tire the operator will have a spare tire that is labeled with the proper inflation pressure and has a sufficient load rating for the vehicle's front and rear Gross Axle Weight Ratings.

The erroneous listing of the vehicle type as ''van'' on the certification label required by 49 CFR Part 567 *Certificatio*n is considered a violation of 49 U.S.C. 30115, *Certification,* which standing alone and without more does not require notification or remedy. Consequently, that portion of Adrian's inconsequentiality petition is moot.

Decision: In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the noncompliances described in its petition are inconsequential to motor vehicle safety. Accordingly, Adrian's petition is hereby granted, and the petitioner is not required to notify owners, purchasers and dealers pursuant to 49 U.S.C. 30118 and provide a remedy in accordance with 49 U.S.C. 30120.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at CFR 1.95 and 501.8.

Issued on July 23, 2013.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2013–18050 Filed 7–26–13; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 24, 2013.

The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before August 28, 2013 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov*, or the entire information collection request maybe found at *www.reginfo.gov.*

Internal Revenue Service (IRS)

OMB Number: 1545–1691.

Type of Review: Extension without change of a currently approved collection.

Title: TD 8898—Continuity of Interest.

Abstract: This regulation provides guidance regarding the continuity of interest requirement for corporate reorganizations. The information collection is a private letter ruling request to apply the final regulations to a transaction in which a taxpayer has entered into a binding agreement on or after January 28, 1998, and before August 30, 2000. This information will be used to ensure that all parties to the transaction take consistent positions for Federal tax purposes.

Affected Public: Private Sector; Businesses or other for-profits.

Estimated Annual Burden Hours: 1,500.

OMB Number: 1545–1813.

Type of Review: Extension without change of a currently approved collection.

Title: Health Coverage Tax Credit (HCTC) Advance Payments.

Form: 1099–H.

Abstract: Form 1099–H is used to report advance payments of health insurance premiums to qualified recipients for their use in computing the allowable health insurance credit on Form 8885.

Affected Public: Private Sector: Businesses and other for-profits.

Estimated Annual Burden Hours: 33,000.

OMB Number: 1545–1856.

Type of Review: Extension without change of a currently approved collection.

Title: Consent To Disclosure of Return Information.

Form: 13362.

Abstract: The consent form is provided to external applicant that will allow the Service the ability to conduct tax checks to determine if an applicant is suitability for employment once they are determined qualified and within reach to receive an employment offer.

Affected Public: Individuals or Households.

Estimated Annual Burden Hours: 7,664.

OMB Number: 1545–1864.

Type of Review: Extension without change of a currently approved collection.

Title: Form 8879–C—IRS e-file Signature Authorization for Form 1120; Form 8879–I—IRS e-file Signature Authorization For Form 1120–F.

Form: 8879–C, 8879–I.

Abstract: Form 8879–C authorizes an officer of a corporation and an electronic return originator (ERO) to use a personal identification number (PIN) to electronically sign a corporation's electronic income tax return and, if applicable, electronic funds withdrawal consent. Form 8879–I authorizes a corporate officer and an electronic return originator (ERO) to use a personal identification number (PIN) to electronically sign a corporation's electronic income tax return.

Affected Public: Private Sector: Businesses and other for-profits.

Estimated Annual Burden Hours: 95,986.

OMB Number: 1545–1866.

Type of Review: Extension without change of a currently approved collection.

Title: Form 8453–C—U.S. Corporation Income Tax Declaration for an IRS e-file Return; Form 8453–I—Foreign Corporation Income Tax Declaration for an IRS e-file Return.

Form: 8453–C, 8453–I.

Abstract: Form 8453–C is used to enable the electronic filing of Form 1120. Form 8453–I is used to enable the electronic filing of Form 1120–F.

Affected Public: Private Sector: Businesses and other for-profits.

Estimated Annual Burden Hours: 28,880.

OMB Number: 1545–1867.

Type of Review: Extension without change of a currently approved collection.

Title: U.S. S Corporation Income Tax Declaration for an IRS e-file Return.

Form: 8453–S.

Abstract: Form 8453–S is used to authenticate and authorize transmittal of an electronic Form 1120–S.

Affected Public: Private Sector: Businesses and other for-profits.

Estimated Annual Burden Hours: 7,590.

OMB Number: 1545–1870.

Type of Review: Extension without change of a currently approved collection.

Title: T.D. 9107—Guidance Regarding Deduction and Capitalization of Expenditures (REG–125638–01).

Abstract: Final regulations require that a taxpayer's nonaccrual-experience method must be self-tested against the taxpayer's experience to determine whether the nonaccrual-experience method clearly reflects the taxpayer's experience. The information required to be retained by taxpayers will constitute sufficient documentation for purposes of substantiating a deduction. The information will be used by the agency on audit to determine the taxpayer's entitlement to a deduction. The respondents include taxpayers who engage in certain transactions involving the acquisition of a trade or business or an ownership interest in a legal entity.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 3,000.

OMB Number: 1545–1871.

Type of Review: Extension without change of a currently approved collection.

Title: Regulations Governing Practice Before the Internal Revenue Service—(TD 9165—Final).

Abstract: These disclosures will ensure that taxpayers are provided with adequate information regarding the limits of tax shelter advice that they receive, and also ensure that practitioners properly advise of taxpayers of relevant information with respect to tax shelter opinions.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 13,333.

OMB Number: 1545–2030.

Type of Review: Extension without change of a currently approved collection.

Title: REG–120509–06 (TD 9465-Final), Determination of Interest Expense Deduction of Foreign Corporations.

Abstract: This document contains final regulations under section 882(c) of the Internal Revenue Code concerning the determination of the interest expense deduction of foreign corporations engaged in a trade or business within the United States. These final regulations conform the interest expense rules to recent U.S. Income Tax Treaty agreements and adopt other changes to improve compliance.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 35.

OMB Number: 1545–2032.

Type of Review: Extension without change of a currently approved collection.

Title: Application to Participate in the Income Verification Express Service (IVES) Program.

Form: 13803.

Abstract: Form 13803 is used to submit the required information necessary to complete the e-services enrollment process for IVES users and to identify delegates receiving transcripts on behalf of the principle account user.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 100.

OMB Number: 1545–2075.

Type of Review: Extension without change of a currently approved collection.

Title: Nonresident Alien Intake and Interview Sheet.

Form: 13614–NR.

Abstract: The completed form is used by screeners, preparers, or others involved in the return preparation process to more accurately complete tax returns of International Students and Scholars. These persons need assistance having their returns prepared so they can fully comply with the law.

Affected Public: Individuals or Households.

Estimated Annual Burden Hours: 141,260.

OMB Number: 1545–2077.

Type of Review: Extension without change of a currently approved collection.

Title: EFTPS Individual Enrollment with Third Party Authorization Form.

Form: 9783T.

Abstract: The information derived from the Form 9783T will allow individual taxpayers to authorize a Third Party to pay their federal taxes on their behalf using the Electronic Federal Tax Payment System (EFTPS).

Affected Public: Individuals or Households.

Estimated Annual Burden Hours: 167.

OMB Number: 1545–2158.

Type of Review: Extension without change of a currently approved collection.

Title: Notice 2010–54—Production Tax Credit for Refined Coal.

Abstract: This notice sets forth interim guidance pending the issuance of regulations relating to the tax credit under § 45 of the Internal Revenue Code (Code) for refined coal.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 1,500.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2013–18106 Filed 7–26–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Funding Opportunity Title: Notice of Allocation Availability (NOAA) Inviting Applications for the combined Calendar Year (CY) 2013 and 2014 Allocation Round of the New Markets Tax Credit (NMTC) Program

Announcement Type: Announcement of NMTC allocation availability.

DATES: Electronic applications must be received by 5:00 p.m. ET on September 18, 2013. Applications sent by mail, facsimile or other form will not be accepted. Please note the Community Development Financial Institutions Fund (CDFI Fund) will only accept applications and attachments (i.e., the CDE's authorized representative signature page, the Controlling Entity's representative signature page, investor letters and organizational charts) in electronic form (see Section IV.D. of this NOAA for more details). Applications must meet all eligibility and other requirements and deadlines, as applicable, set forth in this NOAA. NMTC allocation applicants that are not yet certified as Community Development Entities (CDEs) must submit an application for CDE certification that is postmarked on or before August 9, 2013 (see Section III of this NOAA for more details).

Executive Summary: This NOAA is issued in connection with the combined CY 2013 and 2014 allocation round (Round) of the New Markets Tax Credit (NMTC) Program, as initially authorized by Title I, subtitle C, section 121 of the Community Renewal Tax Relief Act of 2000 (Pub.L. 106–554) and amended by section 221 of the American Jobs Creation Act of 2004 (Pub.L. 108–357), section 101 of the Gulf Opportunity Zone Act of 2005 (P.L. 108–357), Division A, section 102 of the Tax Relief and Health Care Act of 2006 (Pub. L. 109–432), section 733 of the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (Pub. L. 111–312), and the American Taxpayer Relief Act of 2012 (the Act). Through the NMTC Program, the CDFI Fund provides authority to CDEs to offer an incentive to investors in the form of tax credits over seven years, which is expected to stimulate the provision of private investment capital that, in turn, will facilitate economic and community development in Low-Income Communities. Through this NOAA, the CDFI Fund announces the availability of up to $8.5 billion of NMTC investment authority, $3.5 billion of which has been authorized in the Act and an additional $5.0 billion, which is subject to Congressional authorization.

In this NOAA, the CDFI Fund specifically addresses how an entity may apply to receive an allocation of NMTCs, the competitive procedure through which NMTC allocations will be made, and the actions that will be taken to ensure that proper allocations are made to appropriate entities.

I. Allocation Availability Description

A. *Programmatic changes from CY 2012 round:*

1. *Allocation Amounts:* As described in Section IIA, the CDFI Fund anticipates that it will provide NMTC allocation awards for not more than $125 million of allocation per Allocatee.

2. *Prior QEI Issuance Requirements:* In order to be eligible to apply for NMTC allocations in this Round, as described in Section III.A.2(a), applicants that have received NMTC allocation awards in previous rounds are required to meet minimum Qualified Equity Investment (QEI) issuance thresholds with respect to their prior-year allocations. These thresholds and deadlines have been revised in comparison to the CY 2012 NOAA.

3. *Assurances and Certification written explanations:* An applicant that fails to correctly answer a question under the Assurances and Certifications section of the application and submit the required written explanation, but fails to do so is deemed to be ineligible, at the discretion of the CDFI Fund.

4. *Affordable housing requirement:* An applicant that proposes to use NMTCs to invest in projects that result in housing units must ensure that at least 20 percent of aggregate developed or rehabilitated units are affordable housing, as defined in the September 2011 NMTC Compliance and Monitoring Frequently Asked Questions document.

5. *Definition of a Rural CDE:* The definition of a Rural CDE is revised to reduce the track record required for the number of years of direct financing dollars from each of the last five years to three out of the last five years.

B. *Program guidance and regulations:* This NOAA provides guidance for the application and allocation of NMTCs for this Round of the NMTC Program and

should be read in conjunction with: (i) Guidance published by the CDFI Fund on how an entity may apply to become certified as a CDE (66 **Federal Register** 65806, December 20, 2001); (ii) the final regulations issued by the Internal Revenue Service (26 CFR 1.45D–1, published on December 28, 2004), as amended and related guidance, notices and other publications; and (iii) the application and related materials for this Round. All such materials may be found on the CDFI Fund's Web site at *http://www.cdfifund.gov*. The CDFI Fund encourages applicants to review these documents. Capitalized terms used, but not defined, in this NOAA shall have the respective meanings assigned to them in the allocation application, IRC § 45D or the IRS regulations. In the event of any inconsistency between the allocation application, IRC § 45D or the IRS regulations, the provisions of IRC § 45D and the IRS regulations shall govern.

II. Allocation Information

A. *Allocation amounts:* Pursuant to the Act, the CDFI Fund expects that it may allocate to CDEs the authority to issue to their investors up to the aggregate amount of $8.5 billion in equity as to which NMTCs may be claimed, as permitted under IRC § 45D(f)(1)(D). Pursuant to this NOAA, the CDFI Fund anticipates that it will not issue more than $125 million in tax credit investment authority per Allocatee. The CDFI Fund, in its sole discretion, reserves the right to allocate amounts in excess of or less than the anticipated maximum allocation amount should the CDFI Fund deem it appropriate. In order to receive an allocation in excess of the $125 million cap, an applicant, at a minimum, will need to demonstrate that: (i) No part of its strategy can be successfully implemented without an allocation in excess of the applicable cap; and/or (ii) its strategy will produce extraordinary community outcomes. The CDFI Fund reserves the right to allocate NMTC authority to any, all, or none of the entities that submit an application in response to this NOAA, and in any amount it deems appropriate.

B. *Types of awards:* NMTC Program awards are made in the form of allocations of tax credit investment authority.

C. *Allocation Agreement:* Each Allocatee under this NOAA must sign an Allocation Agreement, which must be countersigned by the CDFI Fund, before the NMTC allocation is effective. The Allocation Agreement contains the terms and conditions of the allocation. For further information, see Section VI of this NOAA.

III. Eligibility

A. *Eligible applicants:* IRC § 45D specifies certain eligibility requirements that each applicant must meet to be eligible to apply for an allocation of NMTCs. The following sets forth additional detail and certain additional dates that relate to the submission of applications under this NOAA for the available NMTC investment authority.

1. *CDE certification:* For purposes of this NOAA, the CDFI Fund will not consider an application for an allocation of NMTCs unless: (a) the applicant is certified as a CDE at the time the CDFI Fund receives its NMTC Program allocation application; or (b) the applicant submits an application for certification as a CDE that is Postmarked on or before August 9, 2013. Applicants for certification may obtain a CDE certification application through the CDFI Fund's Web site at *http://www.cdfifund.gov*. Applications for CDE certification must be submitted as instructed in the application form. An applicant that is a Community Development Financial Institution (CDFI) or a Specialized Small Business Investment Company (SSBIC) does not need to submit a CDE certification application; however, it must register as a CDE on the CDFI Fund's Web site on or before 5:00 p.m. ET on August 9, 2013. See Section IV.D.1(b) of this NOAA for further requirements relating to Postmarks.

The CDFI Fund will not provide NMTC allocation authority to applicants that are not certified as CDEs nor to entities that are certified as Subsidiary CDEs.

If an applicant that has already been certified as a CDE wishes to change its designated CDE service area, it must submit its request for such change to the CDFI Fund, and the request must be received by the CDFI Fund by 5:00 p.m. ET on August 9, 2013. The CDE service area change request must be sent from the applicant's authorized representative and include the applicable CDE control number, the revised service area designation, and an updated accountability chart that reflects representation from Low-Income Communities in the revised service area. The service area change request must be sent by email to *ccme@cdfi.treas.gov*.

2. *Prior awardees or Allocatees:* Applicants must be aware that success in a prior round of any of the CDFI Fund's programs is not indicative of success under this NOAA. For purposes of this section, the CDFI Fund will consider an Affiliate to be any entity that meets the definition of Affiliate as defined in the NMTC allocation application materials, or any entity otherwise identified as an Affiliate by the applicant in its NMTC allocation application materials. Prior awardees of any CDFI Fund program are eligible to apply under this NOAA, except as follows:

(a) *Prior Allocatees and Qualified Equity Investment (QEI) issuance requirements:* The following describes the QEI issuance requirements applicable to prior Allocatees.

A prior Allocatee in the CY 2007 round of the NMTC Program is not eligible to receive a NMTC allocation pursuant to this NOAA unless the Allocatee is able to affirmatively demonstrate that, as of 11:59 p.m. ET on December 31, 2013, it has finalized at least 95 percent of its QEIs relating to its CY 2007 NMTC allocation.

A prior Allocatee in the CY 2008 round of the NMTC Program is not eligible to receive a NMTC allocation pursuant to this NOAA unless the Allocatee is able to affirmatively demonstrate that, as of 11:59 p.m. ET on December 31, 2013, it has: (i) finalized at least 80 percent of its QEIs relating to its CY 2008 NMTC allocation; or (ii) it has finalized at least 70 percent of its QEIs and that at least 100 percent of its total CY 2008 NMTC allocation has been finalized, or has been committed by its investors.

A prior Allocatee in the CY 2009 round of the NMTC Program is not eligible to receive a NMTC allocation pursuant to this NOAA unless the Allocatee is able to affirmatively demonstrate that, as of 11:59 p.m. ET on December 31, 2013, it has: (i) finalized at least 70 percent of its QEIs relating to its CY 2009 NMTC allocation; or (ii) it has finalized at least 60 percent of its QEIs and that at least 80 percent of its total CY 2009 NMTC allocation has been finalized, or has been committed by its investors.

A prior Allocatee in the CY 2010 round of the NMTC Program is not eligible to receive a NMTC allocation pursuant to this NOAA unless the Allocatee is able to affirmatively demonstrate that, as of 11:59 p.m. ET on December 31, 2013, it has: (i) finalized at least 60 percent of its QEIs relating to its CY 2010 NMTC allocation; or (ii) it has finalized at least 50 percent of its QEIs and that at least 80 percent of its total CY 2010 NMTC allocation has been finalized, or has been committed by its investors.

A prior Allocatee (with the exception of a Rural CDE Allocatee) in the CY 2011 round of the NMTC Program is not eligible to receive a NMTC allocation

pursuant to this NOAA unless the Allocatee is able to affirmatively demonstrate that, as of 11:59 p.m. ET on December 31, 2013, it has: (i) finalized at least 50 percent of its QEIs relating to its CY 2011 NMTC allocation; or (ii) it has finalized at least 40 percent of its QEIs and that at least 60 percent of its total CY 2011 NMTC allocation has been finalized, or has been committed by its investors. A prior Rural CDE Allocatee in the CY 2011 is not eligible to receive a NMTC allocation pursuant to this NOAA unless the Allocatee can demonstrate that, as of 11:59 p.m. ET on December 31, 2013, it has finalized at least 30 percent of its CY 2011 NMTC Allocation.

A prior Allocatee (with the exception of a Rural CDE Allocatee) in the CY 2012 round of the NMTC Program is not eligible to receive a NMTC allocation pursuant to this NOAA unless the Allocatee is able to affirmatively demonstrate that, as of 11:59 p.m. ET on December 31, 2013, it has: (i) Finalized at least 30 percent of its QEIs relating to its CY 2012 NMTC allocation; or (ii) finalized at least 20 percent of its QEIs and that at least 50 percent of its total CY 2012 NMTC allocation has been finalized, or has been committed by its investors. A Rural CDE is not required to meet the above QEI issuance and commitment thresholds with regard to its CY 2012 NMTC allocation award.

In addition to the requirements described above, an entity is not eligible to receive a NMTC allocation pursuant to this NOAA if an Affiliate of the applicant is a prior Allocatee and has not met the requirements for the issuance and/or commitment of QEIs as set forth above for the Allocatees in the prior allocation rounds of the NMTC Program.

Notwithstanding the above, if an applicant has received multiple NMTC allocation awards between the CY 2007 and the CY 2012, the applicant shall be deemed to be eligible to apply for a NMTC allocation pursuant to this NOAA if the applicant is able to affirmatively demonstrate that, as of 11:59 p.m. ET on December 31, 2013, it has finalized at least 90 percent of its QEIs relating to its cumulative allocation amounts from these prior NMTC Program rounds. Rural CDEs that received allocations under the CY 2011 round may choose to exclude such allocations from this cumulative calculation, provided that the Allocatee has finalized at least 20 percent of its QEIs relating to its CY 2011 allocation. Rural CDEs that received allocations under the CY 2012 round may choose to exclude such allocation from this cumulative calculation.

For purposes of this section of the NOAA, the CDFI Fund will only recognize as ''finalized'' those QEIs that have been properly reported in the CDFI Fund's Allocation Tracking System (ATS) by the deadlines specified above. Allocatees and their Subsidiary Allocatees, if any, are advised to access ATS to record each QEI that they issue to an investor in exchange for funds in-hand. For purposes of this section of the NOAA, ''committed'' QEIs are only those Equity Investments that are evidenced by a written, signed document in which an investor: (i) commits to make a QEI in the Allocatee in a specified amount and on specified terms; (ii) has made an initial disbursement of the investment proceeds to the Allocatee, and such initial disbursement has been recorded in ATS as a QEI; (iii) commits to disburse the remaining investment proceeds to the Allocatee based on specified amounts and payment dates; and (iv) commits to make the final disbursement to the Allocatee no later than December 31, 2015.

The applicant will be required, upon notification from the CDFI Fund, to submit adequate documentation to substantiate the required issuances of and commitments for QEIs.

Applicants should be aware that these QEI issuance requirements represent the minimum threshold requirements that must be met in order to submit an application for assistance under this NOAA. As stated in Section V.B.2 of this NOAA, the CDFI Fund reserves the right to reject an application and/or adjust award amounts as appropriate based on information obtained during the review process—including an applicant's track record of raising QEIs and/or deploying its Qualified Low Income Community Investments (QLICIs).

Prior Allocatees that require any action by the CDFI Fund (i.e., certifying a subsidiary entity as a CDE; adding a subsidiary CDE to an Allocation Agreement; etc.) in order to meet the QEI issuance requirements above must submit their Certification Application for subsidiary CDEs by no later than October 1, 2013 and Allocation Agreement Amendment requests by no later than November 1, 2013 in order to guarantee that the CDFI Fund completes all necessary approvals prior to December 31, 2013. Applicants for certification may obtain a CDE certification application through the CDFI Fund's Web site at *http://www.cdfifund.gov*. Applications for CDE certification must be submitted as instructed in the application form.

(b) *Failure to meet reporting requirements:* The CDFI Fund will not consider an application submitted by an applicant if the applicant or any of its Affiliates is a prior CDFI Fund awardee or Allocatee under any CDFI Fund program and is not current on the reporting requirements set forth in a previously executed assistance, allocation or award agreement(s), as of the application deadline of this NOAA. Please note that automated systems employed by the CDFI Fund for receipt of reports submitted electronically typically acknowledge only a report's receipt; such acknowledgment does not warrant that the report received was complete and therefore met reporting requirements.

(c) *Pending determination of noncompliance or default:* If an applicant is a prior awardee or Allocatee under any CDFI Fund program and if: (i) it has submitted complete and timely reports to the CDFI Fund that demonstrate noncompliance with or default under a previous assistance, award or Allocation Agreement; and (ii) the CDFI Fund has yet to make a final determination as to whether the entity is in noncompliance or default of its previous assistance, award or Allocation Agreement, the CDFI Fund will consider the applicant's application under this NOAA pending final determination of whether the entity is in noncompliance or default, in the sole determination of the CDFI Fund. Further, if an Affiliate of the applicant is a prior CDFI Fund awardee or Allocatee and if such entity: (i) Has submitted complete and timely reports to the CDFI Fund that demonstrate noncompliance or default with a previous assistance, award or Allocation Agreement; and (ii) the CDFI Fund has yet to make a final determination as to whether the entity is in noncompliance or default of its previous assistance, award or Allocation Agreement, the CDFI Fund will consider the applicant's application under this NOAA pending final determination of whether the entity is in noncompliance or default, in the sole determination of the CDFI Fund.

Notwithstanding the above, any applicant or Affiliate that is in default under Section 3.2 of its previously executed Allocation Agreement is deemed ineligible in this NOAA if (i) the CDFI Fund has made a determination that such applicant is in default under Section 3.2 of a previously executed Allocation Agreement and (ii) the CDFI Fund has provided written notification of such determination to the applicant. Thus, any applicant that is otherwise eligible as of the application deadline must

continue to be compliant with Section 3.2 of its Allocation Agreement(s) after the application deadline, in order for the CDFI Fund to continue evaluating its application. If an applicant fails to do such, the CDFI Fund will no longer deem the applicant eligible.

(d) Default Status: The CDFI Fund will not consider an application submitted by an applicant that is a prior CDFI Fund awardee or Allocatee under any CDFI Fund program if, as of the application deadline of this NOAA: (i) The CDFI Fund has made a determination that such applicant is in default of a previously executed assistance, allocation, or award agreement; (ii) the CDFI Fund has provided written notification of such determination to the Applicant; and (iii) the application deadline of the NOAA is within a period of time, specified in a notification to the prior CDFI Fund awardee or Allocatee, for which any new application from the applicant to the CDFI Fund for an award, allocation, or assistance is prohibited.

Further, the CDFI Fund will not consider an application submitted by an applicant for which there is an Affiliate that is a prior awardee or Allocatee under any CDFI Fund Program if, as of the application deadline of this NOAA: (i) The CDFI Fund has made a determination that such Affiliate is in default of a previously executed assistance, allocation, or award agreement; (ii) the CDFI Fund has provided written notification of such determination to the Affiliate; and (iii) the application deadline of the NOAA is within a period of time, specified in a notification to the prior CDFI Fund awardee or Allocatee, for which any new application from the Affiliate to the CDFI Fund for an award, allocation, or assistance is prohibited.

(e) *Undisbursed award funds:* The CDFI Fund will not consider an application submitted by an applicant that is a prior awardee under any CDFI Fund program if the applicant has a balance of undisbursed award funds (defined below) under said prior award(s), as of the applicable application deadline of this NOAA. Furthermore, an entity is not eligible to apply for an award pursuant to this NOAA if an Affiliate of the applicant is a prior awardee under any CDFI Fund program, and has a balance of undisbursed award funds under said prior award(s), as of the applicable application deadline of this NOAA. In a case where an Affiliate of the applicant is a prior awardee under any CDFI Fund program and has a balance of undisbursed award funds under said prior award(s) as of the applicable application deadline of this NOAA, the CDFI Fund will include the combined awards of the Applicant and such Affiliated entities when calculating the amount of undisbursed award funds.

For purposes of the calculation of undisbursed award funds for the Bank Enterprise Award (BEA) Program, only awards made to the applicant (and any Affiliates) three to five calendar years prior to the end of the calendar year of the application deadline of this NOAA are included (''includable BEA awards''). Thus, for purposes of this NOAA, undisbursed BEA Program award funds are the amount of FYs 2008, 2009, 2010 awards that remain undisbursed as of the application deadline of this NOAA.

For purposes of the calculation of undisbursed award funds for the CDFI Program and the Native Initiatives (NI), only awards made to the Applicant (and any entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant, as determined by the CDFI Fund) two to five calendar years prior to the end of the calendar year of the application deadline of this NOAA are included (''includable CDFI/NI awards''). Thus, for purposes of this NOAA, undisbursed CDFI Program and NI awards are the amount of FYs 2008, 2009, 2010 and 2011 awards that remain undisbursed as of the application deadline of this NOAA.

To calculate total includable BEA/CDFI/NI awards: amounts that are undisbursed as of the application deadline of this NOAA cannot exceed five percent (5%) of the total includable awards. Please refer to an example of this calculation in the Round Allocation Application Q&A document, available on the CDFI Fund's Web site.

The ''undisbursed award funds'' calculation does not include: (i) NMTC allocation authority; (ii) any award funds for which the CDFI Fund received a full and complete disbursement request from the awardee by the applicable application deadline of this NOAA; (iii) any award funds for an award that has been terminated, in writing, by the CDFI Fund or de-obligated by the CDFI Fund; or (iv) any award funds for an award that does not have a fully executed assistance or award agreement. The CDFI Fund strongly encourages Applicants requesting disbursements of ''undisbursed funds'' from prior awards to provide the CDFI Fund with a complete disbursement request at least 30 business days prior to the application deadline of this NOAA.

(f) *Contact the CDFI Fund:* Accordingly, Applicants that are prior awardees and/or Allocatees under any other CDFI Fund program are advised to: (i) comply with the requirements specified in assistance, allocation and/or award agreement(s), and (ii) contact the CDFI Fund to ensure that all necessary actions are underway for the disbursement of any outstanding balance of a prior award(s). All outstanding reports and compliance questions should be directed to the Certification, Compliance Monitoring and Evaluation Manager by email at *ccme@cdfi.treas.gov*, by telephone at (202) 653–0421. All disbursement questions related to the CDFI and NACA Programs should be directed to the CDFI Fund Help Desk by telephone 202–653–0421 (Option 1 for CDFI Program, Option 2 for the NACA Program) or via email at cdfihelp@cdfi.treas.gov. All disbursement questions related to the BEA Program should be directed to David Fleites, Policy and Program Officer by telephone at 202–653–0355 or via email at fleitesd@cdfi.treas.gov. Requests submitted less than thirty calendar days prior to the application deadline may not receive a response before the application deadline.

The CDFI Fund will respond to Applicants' reporting, compliance or disbursement questions between the hours of 9:00 a.m. and 5:00 p.m. ET, starting the date of publication of this NOAA through September 16, 2013 (two days before the application deadline). The CDFI Fund will not respond to Applicants' reporting, compliance, CDE certification or disbursement phone calls or email inquiries that are received after 5:00 p.m. ET on September 16, 2013 until after the funding application deadline of September 18, 2013.

3. *Failure to accurately respond to a question in the Assurances and Certifications section of the application and submit the required written explanation:* The CDFI Fund will not consider the applicant's application if the CDFI Fund determines, in its sole discretion, the applicant inaccurately responded to a question and was required to submit as part of its application a written explanation, with respect to any application Assurances and Certifications, but did not do so.

4. *Entities that propose to transfer NMTCs to Subsidiaries:* Both for-profit and non-profit CDEs may apply for NMTC allocation authority, but only a for-profit CDE is permitted to provide NMTCs to its investors. A non-profit applicant wishing to apply for a NMTC allocation must demonstrate, prior to entering into an Allocation Agreement with the CDFI Fund, that: (i) it controls one or more Subsidiaries that are for-profit entities; and (ii) it intends to

transfer the full amount of any NMTC allocation it receives to said Subsidiary.

An applicant wishing to transfer all or a portion of its NMTC allocation to a Subsidiary is not required to create the Subsidiary prior to submitting a NMTC allocation application to the CDFI Fund. However, the Subsidiary entities must be certified as CDEs by the CDFI Fund, and enjoined as parties to the Allocation Agreement at closing or by amendment to the Allocation Agreement after closing. Before the NMTC allocation transfer may occur it must be pre-approved by the CDFI Fund, in its sole discretion.

The CDFI Fund strongly encourages a non-profit applicant to submit a CDE certification application to the CDFI Fund on behalf of at least one Subsidiary within 60 days after the non-profit applicant receives the Notice of Allocation (NOA) from the CDFI Fund, as such Subsidiary must be certified as a CDE prior to entering into an Allocation Agreement with the CDFI Fund. A non-profit applicant that does not already have a certified for-profit Subsidiary and that fails to submit a certification application for one or more for-profit Subsidiaries within 60 days of the date of the NOA from the CDFI Fund is subject to the CDFI Fund rescinding the award.

5. *Entities that submit applications together with Affiliates; applications from common enterprises:* (a) As part of the allocation application review process, the CDFI Fund considers whether applicants are Affiliates, as such term is defined in the allocation application. If an applicant and its Affiliates wish to submit allocation applications, they must do so collectively, in one application; an applicant and its Affiliates may not submit separate allocation applications. If Affiliated entities submit multiple applications, the CDFI Fund reserves the right either to reject all such applications received or to select a single application as the only application considered for an allocation. In the case of governmental entities, the CDFI Fund may accept applications submitted by Affiliated entities, but only to the extent the CDFI Fund determines that the business strategies and/or activities described in such applications, submitted by separate entities, are distinctly dissimilar and are operated and/or managed by distinctly dissimilar boards and staff, including identified consultants. In such cases, the CDFI Fund reserves the right to limit award amounts to such entities to ensure that the entities do not collectively receive more than the $125 million cap.

For purposes of this NOAA, in addition to assessing whether applicants meet the definition of the term ''Affiliate'' found in the allocation application, the CDFI Fund will consider: (i) Whether the activities described in applications submitted by separate entities are, or will be, operated and/or managed as a common enterprise that, in fact or effect, may be viewed as a single entity; (ii) whether the applications submitted by separate entities contain significant narrative, textual or other similarities, and (iii) whether the business strategies and/or activities described in applications submitted by separate entities are so closely related, in fact or effect, they may be viewed as substantially identical applications. In such cases, the CDFI Fund reserves the right either to reject all applications received from all such entities; to select a single application as the only one that will be considered for an allocation; and, in the event that an Application is selected to receive an allocation award, to deem certain activities ineligible. These requirements shall apply to all applicants, including those that are Affiliated with governmental entities.

(b) Furthermore, an applicant that receives an allocation in this allocation round (or its Subsidiary transferee) may not become an Affiliate of or member of a common enterprise (as defined above) with another applicant that receives an allocation in this allocation round (or its Subsidiary transferee) at any time after the submission of an allocation application under this NOAA. This prohibition, however, generally does not apply to entities that are commonly Controlled solely because of common ownership by QEI investors. This requirement will also be a term and condition of the Allocation Agreement (see Section VI.B of this NOAA and additional application guidance materials on the CDFI Fund's Web site at *http://www.cdfifund.gov* for more details).

6. *Entities created as a series of funds:* An applicant whose business structure consists of an entity with a series of funds must apply for CDE certification for each fund. If such an applicant represents that it is properly classified for Federal tax purposes as a single partnership or corporation, it may apply for CDE certification as a single entity. If an applicant represents that it is properly classified for Federal tax purposes as multiple partnerships or corporations, then it must submit a CDE certification application for the applicant and each fund it would like to participate in the NMTC Program, and each fund must be separately certified as a CDE. Applicants should note, however, that receipt of CDE certification as a single entity or as multiple entities is not a determination that an applicant and its related funds are properly classified as a single entity or as multiple entities for Federal tax purposes. Regardless of whether the series of funds is classified as a single partnership or corporation or as multiple partnerships or corporations, an applicant may not transfer any NMTC allocations it receives to one or more of its funds unless the fund is a certified CDE that is a Subsidiary of the applicant, enjoined to the Allocation Agreement as a Subsidiary Allocatee.

7. *Entities that are BEA Program awardees:* An insured depository institution investor (and its Affiliates and Subsidiaries) may not receive a NMTC allocation in addition to a BEA Program award for the same investment in a CDE. Likewise, an insured depository institution investor (and its Affiliates and Subsidiaries) may not receive a BEA Program award in addition to a NMTC allocation for the same investment in a CDE.

IV. Application And Submission Information

A. *Address to request application package:* Applicants must submit applications electronically under this NOAA, through the CDFI Fund Web site. Following the publication of this NOAA, the CDFI Fund will make the electronic allocation application available on its Web site at *http://www.cdfifund.gov.* Applications sent by mail, facsimile or other form will not be accepted. Please note the CDFI Fund will only accept the application and attachments (i.e., the Applicant's authorized representative signature page, the Controlling Entity's representative signature page, investor letters and organizational charts) in electronic form.

B. *Application content requirements:* Detailed application content requirements are found in the application related to this NOAA. Applicants must submit all materials described in and required by the application by the applicable deadlines. Applicants will not be afforded an opportunity to provide any missing materials or documentation. Electronic applications must be submitted solely by using the format made available at the CDFI Fund's Web site. Additional information, including instructions relating to the submission of supporting information (i.e., the Applicant's authorized representative signature page, the Controlling Entity's representative signature page, investor

letters and organizational charts), is set forth in further detail in the electronic application. An application must include a valid and current Employer Identification Number (EIN) issued by the Internal Revenue Service (IRS) and assigned to the applicant and, if applicable, its Controlling Entity. Electronic applications without a valid EIN are incomplete and cannot be transmitted to the CDFI Fund. For more information on obtaining an EIN, please contact the IRS at (800) 829–4933 or *www.irs.gov.*

An applicant may not submit more than one application in response to this NOAA. In addition, as stated in Section III.A.4 of this NOAA, an applicant and its Affiliates must collectively submit only one allocation application; an applicant and its Affiliates may not submit separate allocation applications except as outlined above. Once an application is submitted, an applicant will not be allowed to change any element of its application.

C. *Form of application submission:* Applicants may only submit applications under this NOAA electronically. Applications sent by facsimile or by email will not be accepted. Submission of an electronic application will facilitate the processing and review of applications and the selection of Allocatees; further, it will assist the CDFI Fund in the implementation of electronic reporting requirements.

1. *Electronic applications:* Electronic applications must be submitted solely by using the CDFI Fund's Web site and must be sent in accordance with the submission instructions provided in the electronic application form. The CDFI Fund recommends use of Internet Explorer version 8 on a Microsoft Windows-based computer, and optimally at least a 56Kbps Internet connection in order to meet the electronic application submission requirements. Use of other browsers (i.e., Firefox), other versions of Internet Explorer, or other systems (i.e., Mac) might result in problems during submission of the application. The CDFI Fund's electronic application system will only permit the submission of applications in which all required questions and tables are fully completed. Additional information, including instructions relating to the submission of supporting information (i.e., the applicant's authorized representative signature page, the Controlling Entity's representative signature page, investor letters and organizational charts) is set forth in further detail in the electronic application and the Online Application Instructions for this Round.

D. *Application submission dates and times:*

1. *Application deadlines:*

(a) *Electronic applications:* must be received by 5:00 p.m. ET on September 18, 2013. Electronic applications cannot be transmitted or received after 5:00 p.m. ET on September 18, 2013. In addition, applicants must separately submit supporting information (i.e., the applicant's authorized representative signature page, the Controlling Entity's representative signature page, investor letters and organizational charts) via their myCDFIFund account. The applicant's authorized representative signature page, the Controlling Entity's representative signature page, investor letters and organizational charts must be submitted on or before 11:59 p.m. on September 20, 2013. Attachments may not exceed a size limit of 5 megabytes (MB). See application instructions, provided in the electronic application and the Round Allocation Application Q&A, for further detail. Applications and other required documents received after this date and time will be rejected. If the applicant's authorized representative signature page is not received by the deadline specified above, the CDFI Fund reserves the right to reject the application. Please note that the document submission deadlines in this NOAA and/or the allocation application are strictly enforced.

(b) *Postmark:* For purposes of this NOAA, the term ''Postmark'' is defined by 26 CFR 301.7502–1. In general, the CDFI Fund will require that the Postmarked document bears a Postmark date that is on or before the applicable deadline. The document must be in an envelope or other appropriate wrapper, properly addressed as set forth in this NOAA and delivered by the United States Postal Service or any other private delivery service designated by the Secretary of the Treasury. For more information on designated delivery services, please see IRS Notice 2002–62, 2002–2 C.B. 574.

E. *Intergovernmental Review:* Not applicable.

F. *Funding Restrictions:* For allowable uses of investment proceeds related to a NMTC allocation, please see 26 U.S.C. 45D and the final regulations issued by the Internal Revenue Service (26 CFR 1.45D–1, published December 28, 2004) and related guidance. Please see Section I, above, for the Programmatic Changes of this NOAA.

G. *Paperwork Reduction:* Under the Paperwork Reduction Act (44 U.S.C. chapter 35), an agency may not conduct or sponsor a collection of information, and an individual is not required to respond to a collection of information, unless it displays a valid OMB control number. Pursuant to the Paperwork Reduction Act, the application has been assigned the following control number: 1559–0016.

V. Application Review Information

There are two parts to the substantive review process for each allocation application: Phase 1 and Phase 2. In Phase 1, the CDFI Fund will evaluate each application, assigning points and numeric scores according to the criteria described below. In Phase 2, the CDFI Fund will rank applicants in accordance with the procedures set forth below.

A. *Criteria:*

1. *Business Strategy* (25-point maximum): (a) When assessing an applicant's business strategy, reviewers will consider, among other things: the applicant's products, services and investment criteria; the prior performance of the applicant or its Controlling Entity, particularly as it relates to making similar kinds of investments as those it proposes to make with the proceeds of QEIs; the applicant's prior performance in providing capital or technical assistance to disadvantaged businesses or communities; the projected level of the applicant's pipeline of potential investments; the extent to which the applicant intends to make QLICIs in one or more businesses in which persons unrelated to the entity hold a majority equity interest; how NMTCs will enable the applicant to create additional value to its financing activities in Low-Income Communities; and the extent to which applicants that otherwise have notable relationships with the Qualified Active Low Income Community Businesses (QALICBs) financed will create benefits (beyond those created in the normal course of a NMTC transaction) to Low-Income Communities.

Under the Business Strategy criterion, an applicant will generally score well to the extent that it will deploy debt or investment capital in products or services which are flexible or non-traditional in form and on better terms than available in the marketplace. An applicant will also score well to the extent that, among other things, it: (i) Has a track record of successfully deploying products and services similar to those it intends to provide with the proceeds of QEIs; (ii) has identified, or has a process for identifying, potential transactions; (iii) demonstrates a likelihood of issuing QEIs and making the related QLICIs in a time period that is significantly shorter than the 5-year period permitted under IRC § 45D(b)(1);

(iv) in the case of an applicant proposing to purchase loans from CDEs, the applicant will require the CDE selling such loans to re-invest the proceeds of the loan sale to provide additional products and services to Low-Income Communities.

(b) *Priority Points:* In addition, as provided by IRC § 45D(f)(2), the CDFI Fund will ascribe additional points to entities that meet one or both of the statutory priorities. First, the CDFI Fund will give up to five (5) additional points to any applicant that has a record of having successfully provided capital or technical assistance to disadvantaged businesses or communities. Second, the CDFI Fund will give five (5) additional points to any applicant that intends to satisfy the requirement of IRC § 45D(b)(1)(B) by making QLICIs in one or more businesses in which persons unrelated (within the meaning of IRC § 267(b) or IRC § 707(b)(1)) to an applicant (or the applicant's subsidiary CDEs) hold the majority equity interest. Applicants may earn points for one or both statutory priorities. Thus, applicants that meet the requirements of both priority categories can receive up to a total of ten (10) additional points. A record of having successfully provided capital or technical assistance to disadvantaged businesses or communities may be demonstrated either by the past actions of an applicant itself or by its Controlling Entity (i.e., where a new CDE is established by a nonprofit corporation with a history of providing assistance to disadvantaged communities). An applicant that receives additional points for intending to make investments in unrelated businesses and is awarded a NMTC allocation must meet the requirements of IRC § 45D(b)(1)(B) by investing substantially all of the proceeds from its QEIs in unrelated businesses. The CDFI Fund will factor in an applicant's priority points when ranking applicants during Phase 2 of the review process, as described below.

2. *Community Outcomes* (25-point maximum): In assessing the potential benefits to Low-Income Communities that may result from the applicant's proposed investments, reviewers will consider, among other things, the degree to which the applicant is likely to: (i) Achieve significant and measurable community development outcomes in its Low-Income Communities; (ii) invest in particularly economically distressed markets: (iii) engage with local communities regarding investments; and (iv) demonstrate a track record of investing in businesses that spur additional private capital investment in Low-Income Communities. An applicant will generally score well under this section to the extent that: (a) it articulates how its strategy is likely to produce significant and measurable community development outcomes that would not be achieved without NMTCs; (b) it is working in particularly economically distressed or otherwise underserved communities; (c) its activities are part of a broader neighborhood revitalization strategy; (d) it ensures that an investment into a project or business is supported by and will be beneficial to the surrounding community; and (e) it is likely to engage in activities that will spur additional private capital investment.

3. *Management Capacity* (25-point maximum): In assessing an applicant's management capacity, reviewers will consider, among other things, the qualifications of the applicant's principals, its board members, its management team, and other essential staff or contractors, with specific focus on: experience in deploying capital or technical assistance, including activities similar to those described in the applicant's business strategy; asset management and risk management experience; experience with fulfilling compliance requirements of other governmental programs, including other tax programs; and the applicant's (or its Controlling Entity's) financial health. Reviewers will also consider the extent to which an applicant has protocols in place to ensure ongoing compliance with NMTC Program requirements and the level of involvement of community representatives in the Governing Board and/or Advisory Board in approving investment criteria or decisions.

An applicant will generally score well under this section to the extent that its management team or other essential personnel have experience in: (a) Deploying capital or technical assistance in Low-Income Communities, particularly those likely to be served by the applicant with the proceeds of QEIs; (b) asset and risk management; and (c) fulfilling government compliance requirements, particularly tax credit program compliance. An applicant will also score well to the extent it demonstrates strong financial health and a high likelihood of remaining a going-concern; has policies and systems in place to ensure ongoing compliance with NMTC Program requirements; has Low-Income Community representatives in the Governing Board and/or Advisory Board that play an active role in designing or implementing its investment criteria and/or decisions; and, if it is a Federally-insured financial institution, its most recent Community Reinvestment Act (CRA) rating was ''outstanding.''

4. *Capitalization Strategy* (25-point maximum): When assessing an applicant's capitalization strategy, reviewers will consider, among other things: the key personnel of the applicant (or Controlling Entity) and their track record of raising capital, particularly from for-profit investors; the extent to which the applicant has secured investments, commitments to invest in NMTC, or indications of investor interest commensurate with its requested amount of tax credit allocations; the applicant's strategy for identifying additional investors, if necessary, including the applicant's (or its Controlling Entity's) prior performance with raising equity from investors, particularly for-profit investors; the distribution of the economic benefits of the tax credit; the extent to which the applicant intends to invest the proceeds from the aggregate amount of its QEIs at a level that exceeds the requirements of IRC § 45D(b)(1)(B) and the IRS regulations; the likelihood the applicant will raise sufficient capital to finance its cost of operations; and the applicant's timeline for utilizing an NMTC allocation.

An applicant will generally score well under this section to the extent that: (a) It has secured investor commitments, or has a reasonable strategy for obtaining such commitments; (b) its request for allocations is commensurate with both the level of QEIs it is likely to raise and its expected investment strategy to deploy funds raised with NMTCs; (c) it generally demonstrates that the economic benefits of the tax credit will be passed through to a QALICB; (d) it is likely to secure capital to finance its cost of operations consistent with the applicant's overall business strategy and timeline for making investments; and (e) it intends to invest the proceeds from the aggregate amount of its QEIs at a level that exceeds the requirements of IRC § 45D(b)(1)(B) and the IRS regulations. In the case of an applicant proposing to raise investor funds from organizations that also will identify or originate transactions for the applicant or from Affiliated entities, said applicant will score well to the extent that it will offer products with more favorable rates or terms than those currently offered by its investor(s) or Affiliated entities and/or will target its activities to areas of greater economic distress than those currently targeted by the investor or Affiliated entities.

B. *Review and selection process:* All allocation applications will be reviewed for eligibility and completeness. The CDFI Fund may consult with the IRS on

the eligibility requirements under IRC § 45D. To be complete, the application must contain, at a minimum, all information described as required in the application form. An incomplete application will be rejected. Once the application has been determined to be eligible and complete, the CDFI Fund will conduct the substantive review of each application in two parts (Phase 1 and Phase 2) in accordance with the criteria and procedures generally described in this NOAA and the allocation application.

1. *Phase 1:* Reviewers will evaluate and score each application in the first part of the review process. An applicant must exceed a minimum overall aggregate base score threshold *and* exceed a minimum aggregate section score threshold in each of the four application sections (Business Strategy, Community Outcomes, Management Capacity, and Capitalization Strategy) in order to advance from the first part of the substantive review process. If, in the case of a particular application, a reviewer's total base score or section score(s) (in one or more of the four application scored sections) varies significantly from other reviewers' total base scores or section scores for such application, the CDFI Fund may, in its sole discretion, obtain the comments and recommendations of an additional reviewer to determine whether the anomalous score should be replaced with the score of the additional reviewer.

2. *Phase 2:* Once the CDFI Fund has determined which applicants have met the required minimum overall aggregate base score and aggregate section score thresholds, the CDFI Fund will rank applicants on the basis of their combined scores in the Business Strategy and Community Outcomes sections of the application and will make adjustments to each applicant's priority points so that these points maintain the same relative weight in the ranking of applicant scores in Phase 2 as in Phase 1. The CDFI Fund will award allocations in the order of this ''Final Rank Score,'' subject to applicants' meeting all other eligibility requirements; provided, however, that the CDFI Fund, in its sole discretion, reserves the right to reject an application and/or adjust award amounts as appropriate based on information obtained during the review process. Most notably, in the cases of applicants (or their Affiliates) that are prior year Allocatees, the CDFI Fund will review the activities of the prior year Allocatee to determine whether the entity has: (a) effectively utilized its prior-year allocations; and (b) substantiated a need for additional allocation authority.

3. *Late Reports:* In the case of an applicant, or Affiliates, that has previously received an award or allocation from the CDFI Fund through any CDFI Fund program, the CDFI Fund will deduct points for the applicant's (or its Affiliate's) failure to meet the reporting deadlines set forth in any assistance, award or Allocation Agreement(s) with the CDFI Fund during the entity's two complete fiscal years prior to the application deadline of this NOAA (generally FY 2011 and FY 2012).

C. *Allocations serving Non-Metropolitan counties:* As provided for under Section 102(b) of the Tax Relief and Health Care Act of 2006 (P. L. 109–432), the CDFI Fund shall ensure that non-metropolitan counties receive a proportional allocation of QEIs under the NMTC Program. To this end, the CDFI Fund will ensure that the proportion of Allocatees that are Rural CDEs is, at a minimum, equal to the proportion of applicants in the Phase 2 review pool that are Rural CDEs. The CDFI Fund will also endeavor to ensure that 20 percent of the QLICIs to be made using QEI proceeds are invested in Non-Metropolitan counties. A Rural CDE is one that has made direct investments in at least three of the past five years, over the past five years dedicated at least 50 percent of its direct financing dollars to Non-Metropolitan counties, and has committed that at least 50 percent of its NMTC financing dollars with this Allocation will be deployed in such areas. Non-Metropolitan counties are counties not contained within a Metropolitan Statistical Area, as such term is defined in OMB Bulletin No. 10–02 (Update of Statistical Area Definitions and Guidance on Their Uses) and applied using 2010 census tracts.

Applicants that meet the minimum scoring thresholds will be advanced to Phase 2 review and will be provided with ''preliminary'' awards, in descending order of Final Rank Score, until the available allocation authority is fulfilled. Once these ''preliminary'' award amounts are determined, the CDFI Fund will then analyze the Allocatee pool to determine whether the two Non-Metropolitan proportionality objectives have been met.

The CDFI Fund will first examine the ''preliminary'' awards and Allocatees to determine whether the percentage of Allocatees that are Rural CDEs is, at a minimum, equal to the percentage of applicants in the Phase 2 review pool that are Rural CDEs. If this objective is not achieved, the CDFI Fund will provide awards to additional Rural CDEs from the Phase 2 pool, in descending order of their Final Rank Score, until the appropriate percentage balance is achieved. In order to accommodate the additional Allocatees within the available allocation limitations, a formula reduction will be applied uniformly to the allocation amount for all Allocatees in the pool.

The CDFI Fund will then determine whether the pool of Allocatees will, in the aggregate, invest at least 20 percent of their QLICIs (as measured by dollar amount) in Non-Metropolitan counties. The CDFI Fund will first apply the ''minimum'' percentage of QLICIs that Allocatees indicated in their applications would be targeted to Non-Metropolitan areas to the total allocation award amount of each Allocatee (less whatever percentage the Allocatee indicated would be retained for non-QLICI activities), and total these figures for all Allocatees. If this aggregate total is greater than or equal to 20 percent of the QLICIs to be made by the Allocatees, then the pool is considered balanced and the CDFI Fund will proceed with the allocation process. However, if the aggregate total is less than 20 percent of the QLICIs to be made by the Allocatees, the CDFI Fund will consider requiring any or all of the Allocatees to direct up to the ''maximum'' percentage of QLICIs that the Allocatees indicated would be targeted to Non-Metropolitan counties, taking into consideration their track record and ability to deploy dollars in Non-Metropolitan counties. If the CDFI Fund cannot meet the goal of 20 percent of QLICIs in Non-Metropolitan counties by requiring any or all Allocatees to commit up to the maximum percentage of QLICIs that they indicated would be targeted to Non-Metropolitan counties, the CDFI Fund may add additional Rural CDEs (in descending order of final rank score) to the Allocatee pool. In order to accommodate any additional Allocatees within the allocation limitations, a formula reduction will be applied as uniformly as possible, to the allocation amount for all Allocatees in the pool that have not committed to investing at least 20 percent of their QLICIs in Non-Metropolitan counties.

D. *Questions:* All outstanding reports or compliance questions should be directed to the Certification, Compliance Monitoring and Evaluation Manager by email at *ccme@cdfi.treas.gov;* by telephone at (202) 653–0423; or by mail to CDFI Fund, CCME Unit, Attention: Compliance, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220. The CDFI Fund will respond to reporting or

compliance questions between the hours of 9:00 a.m. and 5:00 p.m. ET, starting the date of the publication of this NOAA through September 16, 2013. The CDFI Fund will not respond to reporting or compliance phone calls or email inquiries that are received after 5:00 p.m. ET on September 16, 2013 until after the funding application deadline of September 18, 2013.

E. *Right of rejection:* The CDFI Fund reserves the right to reject any NMTC allocation application in the case of a prior CDFI Fund awardee, if such applicant has failed to comply with the terms, conditions, and other requirements of the prior or existing assistance or award agreement(s) with the CDFI Fund. The CDFI Fund reserves the right to reject any NMTC allocation application in the case of a prior CDFI Fund Allocatee, if such applicant has failed to comply with the terms, conditions, and other requirements of its prior or existing Allocation Agreement(s) with the CDFI Fund. The CDFI Fund reserves the right to reject any NMTC allocation application in the case of any applicant, if an Affiliate of the applicant has failed to meet the terms, conditions and other requirements of any prior or existing assistance agreement, award agreement or Allocation Agreement with the CDFI Fund.

The CDFI Fund reserves the right to reject any NMTC allocation application in the case of a prior CDFI Fund Allocatee, if such applicant has failed to use its prior NMTC allocation(s) in a manner that is generally consistent with the business strategy (including, but not limited to, the proposed product offerings, QALICB type, and markets served) set forth in the allocation application(s) related to such prior allocation(s). The CDFI Fund also reserves the right to reject any NMTC allocation application in the case of an Affiliate of the applicant that is a prior CDFI Fund Allocatee and has failed to use its prior NMTC allocation(s) in a manner that is generally consistent with the business strategy set forth in the allocation application(s) related to such prior allocation(s).

The CDFI Fund reserves the right to reject an NMTC allocation application if information (including administrative errors or omission of information) comes to the attention of the CDFI Fund that adversely affects an applicant's eligibility for an award, adversely affects the CDFI Fund's evaluation or scoring of an application, adversely affects the CDFI Fund's prior determinations of CDE certification, or indicates fraud or mismanagement on the part of an applicant or the Controlling Entity, if such fraud or mismanagement by the Controlling Entity would hinder the applicant's ability to perform under the Allocation Agreement. If the CDFI Fund determines that any portion of the application is incorrect in any material respect, the CDFI Fund reserves the right, in its sole discretion, to reject the application.

As a part of the substantive review process, the CDFI Fund may permit the Allocation Recommendation Panel member(s) to request information from applicants for the sole purpose of obtaining, clarifying or confirming application information or omission of information. In no event shall such contact be construed to permit an applicant to change any element of its application. At this point in the process, an applicant may be required to submit additional information about its application in order to assist the CDFI Fund with its final evaluation process. Such requests must be responded to within the time parameters set by the CDFI Fund. The selecting official(s) will make a final allocation determination based on an applicant's file, including, without limitation, eligibility under IRC§ 45D, the reviewers' scores and the amount of allocation authority available. In the case of applicants (or Affiliates of applicants) that are regulated by the Federal government or a State agency (or comparable entity), the CDFI Fund's selecting official(s) reserve(s) the right to consult with and take into consideration the views of the appropriate Federal or State banking and other regulatory agencies. In the case of applicants (or Affiliates of applicants) that are also Small Business Investment Companies, Specialized Small Business Investment Companies or New Markets Venture Capital Companies, the CDFI Fund reserves the right to consult with and take into consideration the views of the Small Business Administration.

The CDFI Fund reserves the right to conduct additional due diligence, as determined reasonable and appropriate by the CDFI Fund, in its sole discretion, related to the applicant, Affiliates, the applicant's Controlling Entity and the officers, directors, owners, partners and key employees of each.

Each applicant will be informed of the CDFI Fund's award decision through an electronic notification whether selected for an allocation or not selected for an allocation, which may be for reasons of application incompleteness, ineligibility or substantive issues. All applicants that are not selected for an allocation based on substantive issues will likely be given the opportunity to obtain feedback on their applications. This feedback will be provided in a format and within a timeframe to be determined by the CDFI Fund, based on available resources.

The CDFI Fund further reserves the right to change its eligibility and evaluation criteria and procedures, if the CDFI Fund deems it appropriate. If said changes materially affect the CDFI Fund's award decisions, the CDFI Fund will provide information regarding the changes through the CDFI Fund's Web site.

There is no right to appeal the CDFI Fund's NMTC allocation decisions. The CDFI Fund's NMTC allocation decisions are final.

VI. Award Administration Information

A. *Allocation Award Compliance:*

1. *Failure to meet reporting requirements:* If an Allocatee, or an Affiliate of an Allocatee, is a prior CDFI Fund awardee or Allocatee under any CDFI Fund program and is not current on the reporting requirements set forth in the previously executed assistance, allocation or award agreement(s), as of the date of the NOA or thereafter, the CDFI Fund reserves the right, in its sole discretion, to reject the application, delay entering into an Allocation Agreement, and/or impose limitations on an Allocatee's ability to issue QEIs to investors until said prior awardee or Allocatee is current on the reporting requirements in the previously executed assistance, allocation or award agreement(s). Please note that the CDFI Fund only acknowledges the receipt of reports that are complete. As such, incomplete reports or reports that are deficient of required elements will not be recognized as having been received. If said prior awardee or Allocatee is unable to meet this requirement within the timeframe set by the CDFI Fund, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the allocation made under this NOAA.

2. *Pending determination of noncompliance or default:* If an Allocatee is a prior awardee or Allocatee under any CDFI Fund program and if: (i) It has submitted complete and timely reports to the CDFI Fund that demonstrate noncompliance with or a default of a previous assistance, award or Allocation Agreement; and (ii) the CDFI Fund has yet to make a final determination as to whether the entity is in noncompliance or default of its previous assistance, award or Allocation Agreement, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on the Allocatee's ability to issue Qualified Equity Investments to investors, pending final determination of whether the entity is in noncompliance or

default, and determination of remedies, if applicable, in the sole determination of the CDFI Fund. Further, if an Affiliate of an Allocatee is a prior CDFI Fund awardee or Allocatee and if such entity: (i) Has submitted complete and timely reports to the CDFI Fund that demonstrate noncompliance with a previous assistance, award or Allocation Agreement; and (ii) the CDFI Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, award or Allocation Agreement, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on the Allocatee's ability to issue QEIs to investors, pending final determination of whether the entity is in noncompliance or default, and determination of remedies, if applicable, in the sole determination of the CDFI Fund. If the prior awardee or Allocatee in question is unable to satisfactorily resolve the issues of noncompliance, in the sole determination of the CDFI Fund, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the award notification made under this NOAA.

3. *Default status:* If, at any time prior to entering into an Allocation Agreement through this NOAA, the CDFI Fund has made a determination that an Allocatee that is a prior CDFI Fund awardee or Allocatee under any CDFI Fund program is in default of a previously executed assistance, allocation or award agreement(s) and has provided written notification of such determination to the Allocatee, the CDFI Fund reserves the right, in its sole discretion, to reject the application, rescind the award, delay entering into an Allocation Agreement and/or to impose limitations in the Allocation Agreement, including but not limited to, the Allocatee's ability to issue QEIs to investors, until said prior awardee or Allocatee has cured the default by taking actions necessary as specified by the CDFI Fund and within the timeframe specified by the CDFI Fund. Further, if at any time prior to entering into an Allocation Agreement through this NOAA, the CDFI Fund has made a determination that an Affiliate of the Allocatee is a prior CDFI Fund awardee or Allocatee under any CDFI Fund program and is in default of a previously executed assistance, allocation or award agreement(s) and has provided written notification of such determination to the defaulting entity, the CDFI Fund reserves the right, in its sole discretion, reject the application, rescind the award, to delay entering into an Allocation Agreement and/or to impose limitations in the Allocation Agreement, including but not limited to, the Allocatee's ability to issue QEIs to investors, until said prior awardee or Allocatee has cured the default by taking actions necessary as specified by the CDFI Fund and within the timeframe specified by the CDFI Fund. If said prior awardee or Allocatee is unable to meet this requirement, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Allocation and the allocation made under this NOAA.

4. *Termination in default:* If prior to entering into an Allocation Agreement through this NOAA: (i) The CDFI Fund has made a determination that an Allocatee that is a prior CDFI Fund awardee or Allocatee under any CDFI Fund program whose award or allocation was terminated in default of such prior agreement; (ii) the CDFI Fund has provided written notification of such determination to such organization; and (iii) the anticipated date for entering into an Allocation Agreement is within a period of time specified in such notification throughout which any new award, allocation, or assistance is prohibited, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on the Allocatee's ability to issue QEIs to investors, or to terminate and rescind the Notice of Allocation and the allocation made under this NOAA. Furthermore, if prior to entering into an Allocation Agreement through this NOAA: (i) The CDFI Fund has made a determination that an Affiliate of the Allocatee is a prior CDFI Fund awardee or Allocatee under any CDFI Fund program whose award or allocation was terminated in default of such prior agreement; (ii) the CDFI Fund has provided written notification of such determination to the defaulting entity; and (iii) the anticipated date for entering into an Allocation Agreement is within a period of time specified in such notification throughout which any new award, allocation, or assistance is prohibited, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on the Allocatee's ability to issue QEIs to investors, or to terminate and rescind the Notice of Allocation and the allocation made under this NOAA.

B. *Allocation Agreement:* Each applicant that is selected to receive a NMTC allocation (including the applicant's Subsidiary transferees) must enter into an Allocation Agreement with the CDFI Fund. The Allocation Agreement will set forth certain required terms and conditions of the NMTC allocation which may include, but are not limited to, the following: (i) The amount of the awarded NMTC allocation; (ii) the approved uses of the awarded NMTC allocation (i.e., loans to or equity investments in Qualified Active Low-Income Businesses or loans to or equity investments in other CDEs); (iii) the approved service area(s) in which the proceeds of QEIs may be used, including the dollar amount of QLICIs that must be invested in Non-Metropolitan counties; (iv) the time period by which the applicant may obtain QEIs from investors; (v) reporting requirements for all applicants receiving NMTC allocations; and (vi) a requirement to maintain certification as a CDE throughout the term of the Allocation Agreement. If an applicant has represented in its NMTC allocation application that it intends to invest substantially all of the proceeds from its investors in businesses in which persons unrelated to the applicant hold a majority equity interest, the Allocation Agreement will contain a covenant whereby said applicant agrees that it will invest substantially all of said proceeds in businesses in which persons unrelated to the applicant hold a majority equity interest.

In addition to entering into an Allocation Agreement, each applicant selected to receive a NMTC allocation must furnish to the CDFI Fund an opinion from its legal counsel or a similar certification, the content of which will be further specified in the Allocation Agreement, to include, among other matters, an opinion that an applicant (and its Subsidiary transferees, if any): (i) Is duly formed and in good standing in the jurisdiction in which it was formed and the jurisdiction(s) in which it operates; (ii) has the authority to enter into the Allocation Agreement and undertake the activities that are specified therein; (iii) has no pending or threatened litigation that would materially affect its ability to enter into and carry out the activities specified in the Allocation Agreement; and (iv) is not in default of its articles of incorporation, bylaws or other organizational documents, or any agreements with the Federal government.

If an Allocatee identifies Subsidiary transferees, the CDFI Fund reserves the right to require an Allocatee to provide supporting documentation evidencing that it Controls such entities prior to entering into an Allocation Agreement with the Allocatee and its Subsidiary transferees. The CDFI Fund reserves the right, in its sole discretion, to rescind its

allocation award if the Allocatee fails to return the Allocation Agreement, signed by the authorized representative of the Allocatee, and/or provide the CDFI Fund with any other requested documentation, within the deadlines set by the CDFI Fund.

C. *Fees:* The CDFI Fund reserves the right, in accordance with applicable Federal law and if authorized, to charge allocation reservation and/or compliance monitoring fees to all entities receiving NMTC allocations. Prior to imposing any such fee, the CDFI Fund will publish additional information concerning the nature and amount of the fee.

D. *Reporting:* The CDFI Fund will collect information, on at least an annual basis from all applicants that are awarded NMTC allocations and/or are recipients of QLICIs, including such audited financial statements and opinions of counsel as the CDFI Fund deems necessary or desirable, in its sole discretion. The CDFI Fund will use such information to monitor each Allocatee's compliance with the provisions of its Allocation Agreement and to assess the impact of the NMTC Program in Low-Income Communities. The CDFI Fund may also provide such information to the IRS in a manner consistent with IRC § 6103 so that the IRS may determine, among other things, whether the Allocatee has used substantially all of the proceeds of each QEI raised through its NMTC allocation to make QLICIs. The Allocation Agreement shall further describe the Allocatee's reporting requirements.

The CDFI Fund reserves the right, in its sole discretion, to modify these reporting requirements if it determines it to be appropriate and necessary; however, such reporting requirements will be modified only after due notice to Allocatees.

VII. Agency Contacts

The CDFI Fund will provide programmatic and information technology support related to the allocation application between the hours of 9:00 a.m. and 5:00 p.m. ET through September 16, 2013. The CDFI Fund will not respond to phone calls or emails concerning the application that are received after 5:00 p.m. ET on September 16, 2013 until after the allocation application deadline of September 18, 2013. Applications and other information regarding the CDFI Fund and its programs may be obtained from the CDFI Fund's Web site at *http://www.cdfifund.gov.* The CDFI Fund will post on its Web site responses to questions of general applicability regarding the NMTC Program.

A. *Information technology support:* Technical support can be obtained by calling (202) 653–0422 or by email at *ithelpdesk@cdfi.treas.gov.* People who have visual or mobility impairments that prevent them from accessing the Low-Income Community maps using the CDFI Fund's Web site should call (202) 653–0422 for assistance. These are not toll free numbers.

B. *Programmatic support:* If you have any questions about the programmatic requirements of this NOAA, contact the CDFI Fund's NMTC Program Manager by email at cdfihelp@cdfi.treas.gov; or by telephone at (202) 653–0421. These are not toll-free numbers.

C. *Administrative support:* If you have any questions regarding the administrative requirements of this NOAA, contact the CDFI Fund's NMTC Program Manager by email at *cdfihelp@cdfi.treas.gov,* by telephone at (202) 653–0421. These are not toll free numbers.

D. *IRS support:* For questions regarding the tax aspects of the NMTC Program, contact Jian Grant, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS, by telephone at (202) 622–3040, by facsimile at (202) 622–4753, or by mail at 1111 Constitution Avenue NW., Attn: CC:PSI:5, Washington, DC 20224. These are not toll free numbers.

VIII. Information Sessions

In connection with this NOAA, the CDFI Fund may conduct one or more information sessions that will be produced in Washington, DC and broadcast over the internet via webcasting as well as telephone conference calls. For further information on these upcoming information sessions, please visit the CDFI Fund's Web site at *http://www.cdfifund.gov.*

Authority: 26 U.S.C. 45D; 31 U.S.C. 321; 26 CFR 1.45D–1.

Dated: July 24, 2013.

Donna J. Gambrell,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2013–18140 Filed 7–26–13; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Election Out of GST Deemed Allocations.

DATES: Written comments should be received on or before September 27, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Kerry Dennis at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington DC 20224, or through the internet, at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Election Out of GST Deemed Allocations.

OMB Number: 1545–1892.

Regulation Project Number: REG–153841–02 (TD 9208).

Abstract: This information is required by the IRS for taxpayers who elect to have the automatic allocation rules not apply to the current transfer and/or to future transfers to the trust or to terminate such election. This information is also required by the IRS for taxpayers who elect to treat trusts described in section 2632(c)(3)(B)(i) through (vi) as GST trusts or to terminate such election. This information will be used to identify the trusts to which the election or termination of election will apply.

Current Actions: There have been no changes to the regulation. However, in 2010, the regulation was repealed for one year and the estimated number of responses was decreased to 10 (from 25,000), which changed the burden hours from 12,500 to 5 hours. Since then, the one year repeal has expired and the regulation as well as the GST tax is in effect. Therefore, the estimated number of responses has been changed back to 25,000, with a burden of 12,500 (a change of 12,495, from 5 to 12,500).

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 25,000

Estimated Time per Respondent: 30 minutes.

Estimated total annual burden hours: 12,500.

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: July 3, 2013.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 2013–18081 Filed 7–26–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for the Annual Return/Report of Employee Benefit Plan

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 the Annual Return/Report of Employee Benefit Plan.

DATES: Written comments should be received on or before September 27, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Kerry Dennis at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Annual Return/Report of Employee Benefit Plan.

OMB Number: 1545–1610.

Form Number: 5500 and Schedules.

Abstract: The Annual Return/Report of Employee Benefit Plan is an annual information return filed by employee benefit plans. The IRS uses this information to determine if the plan appears to be operating properly as required under the law or whether the plan should be audited.

Current Actions: There are no changes being made to the form or schedules at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals and households, not-for profit institutions, and farms.

Estimated Number of Respondents: 800,000.

Estimated Time Per Respondent: 25 minutes.

Estimated Total Annual Burden Hours: 326,000.

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: June 27, 2013.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 2013–18084 Filed 7–26–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 14134 and Form 14135

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 14134, Application for Certificate of Subordination of Federal Tax Lien, and Form 14135, Application for Certificate of Discharge of Property from Federal Tax Lien.

DATES: Written comments should be received on or before *September 27, 2013* to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, 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 Kerry Dennis at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application for Certificate of Subordination of Federal Tax Lien and Application for Certificate of Discharge of Property from Federal Tax Lien.

OMB Number: 1545–2174.

Form Number: 14134 and 14135.

Abstract: The collection of information is required by 26 CFR 301.6325–1(b)(5) for consideration of the United States discharging property from the federal tax lien and is required by 26 CFR 301.6325–1(d)(4)for consideration that the United States subordinate its interest in property. The information is investigated by Collection personnel in order that the appropriate official may ascertain the accuracy of the application and make a determination whether to issue a discharge or subordination.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit, not-for-profit institutions, farms, Federal Government, State, Local, or Tribal Gov't.

Estimated Number of Respondents: 10,362.

Estimated Time per Respondent: 2 Hours, 11 minutes.

Estimated Total Annual Burden Hours: 22,665.

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: July 12, 2013.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 2013–18082 Filed 7–26–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8960

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 8960, Net Investment Income Tax-Individuals, Estates, and Trusts.

DATES: Written comments should be received on or before September 27, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, 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 R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Net Investment Income Tax-Individuals, Estates, and Trusts.

OMB Number: 1545–2227.

Form Number: Form 8960.

Abstract: Form 8960 is a new dual purpose tax form that allows certain individuals (via Form 1040), and estates and trusts (via Form 1041), to compute a 3.8% tax which will be reported on Form 1040 or Form 1041.

Current Actions: Form 8960 is a new tax form. This form is being submitted for OMB approval purposes only.

Type of Review: Revision to Previously Approved IC.

Affected Public: Individuals or households, Business or other for-profit, and Farms.

Estimated Number of Respondents: 220,000.

Estimated Time per Respondent: 36 minutes.

Estimated Total Annual Burden Hours: 134,200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 23, 2013.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–18187 Filed 7–26–13; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

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Part II

Department of Education

34 CFR Parts 668, 674, 682, et al.

Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 668, 674, 682, and 685

RIN 1840–AD12

[Docket ID ED–2013–OPE–0063]

Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Student Assistance General Provisions, Federal Perkins Loan (Perkins Loan) Program, Federal Family Education Loan (FFEL) Program, and William D. Ford Federal Direct Loan (Direct Loan) Program regulations. The proposed regulations would: amend the FFEL and Direct Loan program regulations to reflect changes made to the Higher Education Act of 1965, as amended (HEA), by the SAFRA Act included in the Health Care and Education Reconciliation Act of 2010; incorporate other recent statutory changes in the Direct Loan Program regulations; update, strengthen, and clarify various areas of the Student Assistance General Provisions, Perkins Loan, FFEL, and Direct Loan program regulations; and provide for greater consistency in the regulations governing the title IV, HEA student loan programs. These proposed regulations would ensure that the title IV, HEA Federal student aid programs operate as efficiently as possible.

DATES: We must receive your comments on or before August 28, 2013.

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 that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''Are you new to the site?''
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about these proposed regulations, address them to Jessica Finkel, U.S. Department of Education, 1990 K Street NW., Room 8031, Washington, DC 20006–8502.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov*. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Jessica Finkel, U.S. Department of Education, 1990 K Street NW., Room 8031, Washington, DC 20006–8502. Telephone: (202) 502–7647 or by email: *mailto:jessica.finkel@ed.gov*.

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

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of This Regulatory Action: These regulations would address issues arising from the changes made to the HEA by the SAFRA Act, included in the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152). The SAFRA Act ended the origination of new loans under the FFEL Program after June 30, 2010. With this change, all new Stafford, PLUS, and Consolidation loans with a first disbursement on or after July 1, 2010, are now made under the Direct Loan Program. Because all new loans are being made under the Direct Loan Program, the proposed regulations would amend the FFEL Program regulations in 34 CFR part 682 by removing provisions related to the making of new loans. The proposed regulations would also amend the Direct Loan Program regulations in 34 CFR part 685 by adding detailed regulations in areas where the Direct Loan Program regulations currently cross-reference the FFEL Program regulations.

The proposed regulations would also strengthen and clarify provisions of the Perkins Loan, FFEL, and Direct Loan program regulations including, but not limited to, regulations governing: Deferments, forbearances, loan cancellation, rehabilitation of defaulted loans, administrative wage garnishment, and satisfactory repayment arrangements. The proposed regulations would also make the rules governing the various title IV, HEA loan programs more consistent.

Summary of the Major Provisions of This Regulatory Action: The proposed regulations would—

- Raise the participation rate index ceiling applicable to institutions that have a single three-year cohort default rate of over 40 percent for purposes of challenges to and appeals from sanctions based on that default rate.
- Clarify the Perkins Loan, FFEL, and Direct Loan program regulations to provide that a borrower who makes six payments in the course of rehabilitating a defaulted loan, but who does not seek additional title IV aid, will not be considered to have used the one-time-only opportunity to regain title IV eligibility by making satisfactory repayment arrangements. The proposed regulations would also define the term ''satisfactory repayment arrangement'' more consistently across the title IV, HEA loan programs.
- Amend the closed school discharge provisions in the Perkins Loan, FFEL, and Direct Loan program regulations to specify that a borrower may qualify for a loan discharge if the borrower withdrew from school not more than 120 days before the school closed, instead of the current 90-day standard. The proposed regulations would also add examples of the types of exceptional circumstances under which the Department may extend the 120-day window.
- Update the FFEL and Direct Loan program enrollment status reporting requirements for institutions to reflect current processes and eliminate obsolete terms and procedures. The proposed regulations would also add comparable enrollment status reporting provisions to the Perkins Loan Program regulations.
- Revise the terms under which a guaranty agency in the FFEL Program may authorize a lender to grant forbearance to permit a borrower or endorser to resume honoring the agreement to repay a debt after default but prior to claim payment to require either a signed written agreement to repay or an oral affirmation of the borrower's or endorser's obligation to repay the debt. The proposed regulations would provide that if a forbearance is granted based on the borrower's or endorser's oral request and affirmation of the obligation, the forbearance is limited to 120 days and cannot be granted for consecutive periods. In addition, the lender must orally review with the borrower the terms and conditions of the forbearance and send a notice to the borrower or endorser that confirms the terms of the forbearance. The proposed regulations would also define the term ''affirmation.'' Finally, the proposed regulations would add comparable provisions in the Direct Loan Program.

• Require that lenders grant forbearance to FFEL borrowers who are performing service that qualifies them for loan repayment under the Department of Defense student loan repayment programs in addition to the program authorized by 10 U.S.C. 2171 (which is currently referenced in the regulations). A comparable forbearance provision would be added to the Direct Loan Program regulations.

• Authorize a lender to grant an administrative forbearance to a FFEL borrower who is delinquent at the beginning of an authorized period of forbearance and add a corresponding provision to the Direct Loan Program regulations.

• Provide that the Secretary, in the Direct Loan Program, and the guaranty agency, in the FFEL Program, would determine a borrower's reasonable and affordable payment amount under a loan rehabilitation agreement based on the borrower's and, if applicable, the borrower's spouse's current disposable income, family size, and reasonable and necessary expenses. The information about income and expenses needed to determine the reasonable and affordable payment amount would be provided by the borrower to the Secretary or the guaranty agency on a form approved by the Secretary and, if requested, with supporting documentation from the borrower or other sources.

• Specify in the FFEL and Direct Loan program regulations that a reasonable and affordable loan rehabilitation payment amount must not be a required minimum payment, a percentage of the borrower's total loan balance, or an amount based on other criteria unrelated to the borrower's total financial circumstances.

• Require that the Secretary, in the Direct Loan Program, or the guaranty agency, in the FFEL Program, provide the borrower with a written rehabilitation agreement within 15 business days of the determination of the borrower's reasonable and affordable payment amount along with a comprehensive description of the borrower's rights, the terms and conditions of the payments, the effects of loan rehabilitation, and, for a FFEL borrower, the treatment of unpaid collection costs.

• Provide that, if the borrower objects to the payment amount determined by the guaranty agency based on the income and expenses shown by the borrower and contained in the written repayment agreement offered to the borrower, the guaranty agency or the Secretary will calculate an amount for the borrower's rehabilitation payment using the formula for calculating a monthly payment amount under the income-based repayment (IBR) plan in the Direct Loan and FFEL Program regulations, and offer the borrower the option to use that amount as the rehabilitation payment amount. The borrower would be free to choose between the amount determined initially and the IBR-based payment amount.

• Provide that, while the borrower is making payments under a rehabilitation agreement, the Secretary and the guaranty agency would limit contact with the borrower to collection activities required by law or regulation and communications that support the rehabilitation.

• Amend the Direct Loan and FFEL program regulations to provide that, when a loan is being collected by administrative wage garnishment (AWG), the Secretary or the guaranty agency, respectively, will suspend AWG after the borrower makes five qualifying monthly payments under a loan rehabilitation agreement, unless the borrower requests that AWG continue.

• Incorporate into the Perkins Loan Program the same eligibility criteria used in the Direct Loan and FFEL programs to define an ''eligible graduate fellowship program'' and to establish the eligibility of a Perkins Loan borrower for a graduate fellowship deferment.

• Eliminate the debt-to-income economic hardship deferment category in the Perkins Loan Program.

• Modify the rehabilitation provisions in the Perkins Loan Program regulations to define the term ''on-time'' as it relates to the series of payments required to successfully rehabilitate a defaulted loan.

• Allow assignment of a Perkins Loan to the Secretary without the borrower's Social Security Number if the loan was made before September 13, 1982.

• Permit a Perkins Loan borrower who is unable to complete the second half of an academic year of teaching due to a condition covered under the Family and Medical Leave Act (FMLA) to still count that year as eligible teaching service for loan cancellation purposes, if the borrower's employer considers the borrower to have fulfilled the teacher contract requirements for that academic year.

• Permit a Perkins Loan borrower who is unable to complete a full year of eligible public service due to a condition that is covered under the FMLA to count that year as a full year of public service for loan cancellation purposes if the borrower completes at least six months of consecutive eligible service.

• Specify that, if a Perkins Loan borrower who is performing service that qualifies the borrower for loan cancellation at a cancellation rate progression of 15 percent for the first and second years of qualifying service, 20 percent for the third and fourth years of qualifying service, and 30 percent for the fifth year of qualifying service, takes a job in a different field that qualifies the borrower under a different cancellation category that provides loan cancellation at the same cancellation rate progression as the prior category, the borrower's cancellation rate under the new cancellation category would continue from the last year the borrower received a cancellation under the former cancellation category, rather than starting over at the first-year cancellation rate.

• Change the timeframe for FFEL lenders to send the required repayment disclosure for borrowers who are 60 days delinquent from five calendar days to five business days after the date the borrower becomes 60 days delinquent.

• Amend the FFEL Program regulations to provide that a lender does not have to send a repayment disclosure to a borrower who is having difficulty making payments if the borrower's difficulty has been resolved through contact resulting from an earlier disclosure or from other contact between the lender and the borrower.

• Amend the regulations governing AWG to reflect the borrower's right to request a hearing on the enforceability of the debt and to allow the borrower to object to the amount or rate of AWG withholding if such withholding would cause financial hardship to the borrower.

• Revise the regulations governing AWG to conform the requirements for borrowers whose defaulted loans are held by a guaranty agency to the rules and procedures used by the Secretary.

• Amend the regulations governing AWG to incorporate existing policy guidance related to third-party servicers or collection contractors retained by guaranty agencies.

• Amend the regulations governing AWG to more clearly describe the process, from the initial garnishment notice to withholding.

• Amend the regulations governing AWG to better reflect due process requirements and to specify the functions, delegations of authority, recordkeeping requirements, and permissible activities of guaranty agencies and third-party servicers or collection contractors.

• Clarify the limitations on the amount that may be subject to AWG if a guaranty agency is garnishing pay

from a borrower who is not already subject to a withholding order or from a borrower who is already subject to one or more withholding orders. The proposed regulations would also permit a greater amount or percentage to be withheld with the borrower's consent.

- Require that for a borrower to receive a hearing before AWG begins, the borrower's written request for a hearing must be received on or before the 30th day following the date the garnishment notice was sent, and delete a provision that a borrower is considered to have received a garnishment notice five days following the date of the notice.
- Provide that if a borrower's written request for a hearing is received by the guaranty agency after the 30th day following the date of the garnishment notice, the agency must provide the borrower a hearing and issue a decision within 60 days following receipt of the request. If a decision is not rendered within 60 days, the guaranty agency must suspend the order beginning on the 61st day after the hearing request was received until a hearing is provided and a decision is rendered.
- Amend the FFEL Program regulations to: Specify the contents of an AWG notice; describe how an AWG hearing is administered, including provisions for the submission of additional evidence and the granting of continuances; provide for the withholding order to end by either rescission or full recovery of amounts owed by the borrower; and clarify that a borrower who wishes to object that he or she is not subject to garnishment because of involuntary separation bears the burden of raising and proving that claim.
- Eliminate provisions in the FFEL Program regulations governing loan origination and disbursement and related requirements and activities except for certain school-based requirements and related activities.
- Eliminate obsolete provisions that do not reflect the current procedures in the FFEL Program.
- Make necessary conforming changes in various FFEL Program provisions to update the regulations.
- In the Direct Loan Program regulations, modify the exception to the minimum loan period requirement for clock-hour and certain non-standard term programs that allows a school, in certain transfer student situations, to originate a loan for a period shorter than the lesser of the academic year or program length only if the school accepts credit or clock hours from the school that the student was previously attending. The proposed regulations would remove the provision that limits this exception to situations in which the school into which the student transfers accepts credit or clock hours from the prior school.
- Add detailed regulations to 34 CFR part 685 in areas where the Direct Loan Program regulations currently just cross-reference the FFEL Program regulations.
- Remove obsolete provisions that do not reflect current procedures used in administering the Direct Loan Program.
- Revise the Direct Loan Program regulations to reflect the impact of the SAFRA Act and other recent statutory changes.

Please refer to the *Summary of Proposed Changes* section of this preamble for more details on the major provisions contained in this notice of proposed rulemaking (NPRM).

Costs and Benefits: The proposed regulations are estimated to have a net budget impact of $2.8 to $3.4 million over ten years from 2013 to 2022. Consistent with the requirements of the Credit Reform Act of 1990 (2 U.S.C. 661(a)(5)), budget cost estimates for the student loan programs reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans. (A cohort reflects all loans originated in a given fiscal year.)

Absent evidence of the impact of these regulations on student behavior, budget cost estimates were based on behavior as reflected in various Department data sets and longitudinal surveys listed under *Assumptions, Limitations, and Data Sources.* Program cost estimates were generated by running projected cash flows related to each provision through the Department's student loan cost estimation model. Student loan cost estimates are developed across five risk categories. The categories are:

- Loans for students attending less than four-year for-profit institutions;
- Loans for students attending less than four-year public and non-profit institutions;
- Loans for freshmen or sophomores in four-year institutions of all types;
- Loans for juniors or seniors in four-year institutions of all types; and
- Loans for graduate students in institutions of all types.

Risk categories have separate assumptions based on the historical pattern of the behavior of borrowers in each category, such as the likelihood of default or of the use of statutory deferment or discharge benefits.

Overall, the proposed regulations would strengthen and streamline the Federal student loan programs and help support the American postsecondary education system. As more and more students depend on student loans to pay for their college education, it is essential that borrowers are able to fully understand and comprehend their rights and responsibilities in relation to their student debt obligations. It is also essential that the student loan programs operate as efficiently as possible. A college education has become essential for employment in a large part of the American economy and the percentage of jobs that require a degree will only increase in the future. The Department's loan programs support over ten million students per year, and this number will grow if the country pursues the President's 2020 goal of leading the world in college degree attainment. Keeping a strong and efficient higher education system is essential to America maintaining its economic advantage in the world.

Invitation to Comment: As outlined in *Negotiated Rulemaking,* significant public participation, through three public hearings and three negotiated rulemaking sessions, has occurred in developing this NPRM. We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

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 regulations. 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 Department's programs and activities.

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing Regulations.gov. You may also inspect the comments in person, in Room 8031, 1990 K Street NW., Washington, DC, between 8:30 a.m. and 4:00 p.m., Washington DC time, Monday through Friday of each week except Federal holidays. Please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a

disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. 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**.

Negotiated Rulemaking

Section 492 of the HEA requires the Secretary, before publishing any proposed regulations for programs authorized by title IV of the HEA, to obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations from the public, including individuals and representatives of groups involved in the Federal student financial assistance programs, the Secretary must establish a negotiated rulemaking committee and subject the proposed regulations to a negotiated rulemaking process. All proposed regulations that the Department publishes on which the negotiators reached consensus must conform to final agreements resulting from that process unless the Secretary reopens the process or provides a written explanation to the participants stating why the Secretary has decided to depart from the agreements. Further information on the negotiated rulemaking process may be found at: *www2.ed.gov/policy/highered/reg/hearulemaking/2011/loans.html*.

On May 5, 2011, the Department published a notice in the **Federal Register** (76 FR 25650) announcing our intent to establish up to two negotiated rulemaking committees to prepare proposed regulations. One committee would focus on issues related to streamlining institutional reporting requirements and proposed regulations regarding better State identification of low-performing teacher preparation programs pursuant to sections 205 and 207 of the HEA by focusing reporting on improved measures of program quality. A second committee (the ''negotiating committee'') would address Federal student loan issues. The regulations considered by the negotiating committee would: Implement changes made by the SAFRA Act (Pub. L. 111–152), which ended the making of new loans in the FFEL Program as of July 1, 2010; make improvements to the income-contingent and income-based repayment plans; and improve the process for consideration of applications for total and permanent disability discharges. The notice requested nominations of individuals for membership on the committees who could represent the interests of key stakeholder constituencies on each committee.

The Department developed a list of proposed regulatory provisions from advice and recommendations submitted to the Department in testimony by individuals and organizations in a series of three public hearings and a roundtable discussion held on:

- May 12, 2011, at Tennessee State University, Nashville, Tennessee.
- May 16, 2011, at Pacific Lutheran University, Tacoma, Washington.
- May 19, 2011, at Loyola University—Lakeshore Campus, Chicago, Illinois.
- May 26, 2011, at College of Charleston, Charleston, South Carolina.

In addition, the Department accepted written comments on possible regulatory provisions submitted directly to the Department by interested parties and organizations. Transcripts of the regional meetings can be accessed at *www2.ed.gov/policy/highered/reg/hearulemaking/2011/loans.html* and are also accessible in the rulemaking docket on *www.regulations.gov*.

Staff within the Department also identified issues for discussion and negotiation.

The negotiating committee included the following members:

- Mr. Getachew Kassa, Legislative Director, United States Student Association, and Mr. Abou Amara, Jr. (alternate), President, Graduate and Professional Student Association, University of Minnesota, Twin Cities.
- Ms. Deanne Loonin, National Consumer Law Center, and Ms. Radhika Miller (alternate), Program Manager, Educational Debt Relief and Outreach, Equal Justice Works.
- Ms. Jennifer Mishory, Deputy Director, Young Invincibles, and Ms. Maureen Thompson (alternate), The Hastings Group, LLC.
- Ms. Margaret Rodriguez, Senior Associate Director of Financial Aid, University of Michigan, and Chair, National Direct Student Loan Coalition, and Ms. Elizabeth Hicks (alternate), Executive Director, Student Financial Services, Massachusetts Institute of Technology.
- Mr. David Glezerman, Assistant Vice President and University Bursar, Temple University, and Ms. Maria Livolsi (alternate), Student Loan Service Center, State University of New York.
- Mr. Robert Perrin, President, Williams & Fudge, Inc.
- Mr. Todd Leatherman, Executive Director, Office of Consumer Protection, Office of the Kentucky Attorney General, and Ms. Michele Casey (alternate), Assistant Attorney General, Consumer Fraud Bureau Office of the Illinois Attorney General.
- Ms. Cristi Millard, Director of Financial Aid, Salt Lake Community College, and Mr. Chris Christensen, (alternate), Director of Financial Aid, Johnson County Community College, Kansas.
- Ms. Kris Wright, Director, Office of Student Finance, University of Minnesota, and Executive Council Member and Secretary, National Direct Student Loan Coalition, and Ms. Elaine Papas-Varas (alternate), University Director of Student Financial Aid and Director of the Primary Care Loan Redemption Program of New Jersey, University of Medicine and Dentistry of New Jersey.
- Ms. Yvonne Gutierrez-Sandoval, Senior Associate Director of Financial Aid, Pitzer College, and Mr. Jeffrey A. Gall (alternate), Associate Dean, Office of Student Financial Services, Georgetown University.
- Mr. Tom Sakos, Director of Student Lending and Regulatory Quality Assurance, DeVry Inc., and Mr. Anthony Fragomeni (alternate), Director of Governmental Affairs, Empire Education Group, and Chairman, American Association of Cosmetology Schools' Government Relations Team.
- Ms. Betsy Mayotte, Director, Regulatory Compliance and Privacy, American Student Assistance, and Mr. Scott Giles (alternate), Vice President for Operations, Social Marketing and Strategy, Vermont Student Assistance Corporation.
- Mr. Robert Sandlin, Director of Policy and Compliance, Higher Education Servicing Corporation, and Ms. Vicki Shipley (alternate), Senior Advisor, National Council of Higher Education Loan Programs.
- Mr. Albert Gray, Executive Director and CEO, Accrediting Council for Independent Colleges and Schools, and Ms. Sharon Tanner (alternate), Chief Executive Officer, National League for Nursing Accreditation.
- Ms. Pamela Moran and Ms. Gail McLarnon, U.S. Department of Education.

The negotiating committee met to develop proposed regulations during the months of January, February, and March of 2012. These proposed regulations, which reflect the work of this committee, relate to the administration of the Federal student loan programs.

At its first meeting, the negotiating committee reached agreement on its protocols and proposed agenda. The negotiating committee's protocols provided that, unless agreed to otherwise, for the committee to be considered to have reached consensus

on the regulations, consensus must be reached on all of the proposed regulations. Consensus means that there must be no dissent by any member.

During its first meeting, the negotiating committee agreed to negotiate an agenda of 25 student loan-related issues. The most significant issues were: Developing regulations necessary to implement the President's ''Pay As You Earn'' repayment initiative; developing regulations to incorporate statutory changes to the IBR plan and to address certain problems in the administration of the IBR and the income-contingent repayment (ICR) plans; overhauling the total and permanent disability discharge process; updating the FFEL Program regulations to eliminate obsolete and unnecessary provisions governing loan origination and disbursement; revising the Direct Loan Program regulations to eliminate cross-references to the FFEL Program regulations; revising regulations governing the determination of a defaulted borrower's reasonable and affordable payment amount for purposes of rehabilitation of the borrower's defaulted loan; revising the regulations governing AWG for defaulted borrowers in the FFEL Program; and providing for consistent treatment of borrowers requesting forbearance on or after the 270th day of delinquency.

The proposed regulations would also include certain technical changes to the regulations that are needed to reflect recent amendments to the HEA and to correct technical errors. These types of changes are not normally subject to the statutory requirements for negotiated rulemaking and public notice and comment. However, since those changes affected the regulations that would be considered by the negotiated rulemaking committee, the Secretary chose to include those changes in the proposed regulations to be considered by the committee to ensure that the committee could evaluate the full scope of changes to those regulations.

The Department stated its commitment to publishing the regulations to implement the Pay As You Earn repayment initiative and to overhaul and improve the total and permanent disability discharge process for borrowers as soon as possible.

During the development of proposed regulatory language and prior to the second meeting of the negotiating committee, the Department concluded that the scope and volume of the likely resulting proposed regulations resulting from the agenda approved by the negotiating committee would require extensive and significant changes to the regulations. In particular, updating the FFEL Program regulations and making major changes to the Direct Loan Program regulations involved changes to the entirety of those program regulations. The Department determined that it was unlikely that one NPRM reflecting all of the issues could be published by the deadline established by section 482(c) of the HEA. To ensure the earliest possible implementation of the Pay As You Earn repayment initiative and the revised total and permanent disability discharge regulations, which will provide significant benefits to student loan borrowers, the Department determined that two NPRMs would result from the negotiating committee's work.

During the second meeting of the negotiating committee, the Department explained to the negotiating committee members that one NPRM would contain proposed regulations to implement the Pay As You Earn repayment initiative, to incorporate statutory changes in the IBR plan, to make other changes to improve the administration of the IBR and ICR plans, and to overhaul the total and permanent disability discharge process. The second NPRM would contain all the remaining proposed regulations that were on the negotiating committee's agenda, including proposed regulations involving rehabilitation of defaulted loans and AWG in the FFEL Program. The Department also explained that any final regulations published as a result of the second NPRM would not be published by November 1, 2012, and therefore would not become effective until July 1, 2014, under the master calendar provisions of section 482(c)(1) of the HEA. The Department committed, however, to authorize, to the extent possible, early implementation of the final regulations published as a result of the second NPRM under the Secretary's authority to designate regulatory provisions for early implementation by program participants under section 482(c)(2) of the HEA.

At the final meeting in March 2012, the negotiating committee reached consensus on the full agenda of loans issues.

On July 17, 2012, the Secretary published the first NPRM to propose changes to implement the President's Pay As You Earn repayment plan and to make changes to the ICR and IBR plans and the process for evaluating disability discharge requests (77 FR 42086). After reviewing the public comments received on the proposed rule, the Secretary published the final regulations on November 1, 2012 (77 FR 66088).

This NPRM is the second of the two NPRMs resulting from the negotiating committee's negotiations. It contains proposed regulations to: Amend the provisions governing the participation rate index ceiling applicable to institutions with a single three-year cohort default rate of over 40 percent for purposes of challenges to and appeals from sanctions; revise the definitions of ''satisfactory repayment arrangement'' in the Perkins Loan, FFEL, and Direct Loan programs; amend the closed school loan discharge regulations in the Perkins Loan, FFEL, and Direct Loan programs; update the enrollment status reporting requirements in the FFEL and Direct Loan program regulations and add comparable requirements to the Perkins Loan Program regulations; amend the forbearance regulations in the FFEL and Direct Loan programs; amend the FFEL and Direct Loan program regulations governing the determination of a borrower's reasonable and affordable payment amount under a loan rehabilitation agreement, and the treatment of payments made through AWG while the borrower is also making payments under a loan rehabilitation agreement; amend the Perkins Loan Program regulations governing graduate fellowship and economic hardship deferments; modify the Perkins Loan Program regulations governing rehabilitation of a defaulted loan; amend the requirements for assigning a Perkins Loan to the Secretary; amend the Perkins Loan Program regulations related to loan cancellation; amend the FFEL Program regulations governing certain lender disclosures to borrowers; amend the FFEL Program regulations governing the AWG process; revise the FFEL Program regulations by removing provisions that are no longer needed and make necessary technical and conforming changes; amend the Direct Loan Program regulations governing the minimum period of enrollment for which a loan may be originated in certain transfer student situations; revise the Direct Loan Program regulations by incorporating provisions that apply in the Direct Loan Program but are currently only incorporated by reference to the FFEL Program regulations; amend the Direct Loan Program regulations to reflect recent statutory changes; remove obsolete provisions from the Direct Loan Program regulations; and make necessary technical corrections and conforming changes throughout the Direct Loan Program regulations.

More information on the work of the negotiating committee can be found at: *www.ed.gov/policy/highered/reg/hearulemaking/2008/loans.html*.

Summary of Proposed Changes

Student Assistance General Provisions

For purposes of challenges to and appeals from sanctions, the proposed regulations would raise the participation rate index ceiling applicable to institutions that have a single three-year cohort default rate of over 40 percent from 0.06015 to 0.0832.

Changes That Apply to the Perkins Loan, FFEL, and Direct Loan Programs

• The definitions of ''satisfactory repayment arrangement'' in the Perkins Loan, FFEL, and Direct Loan program regulations would be revised to provide that a borrower is not considered to have used the one-time-only opportunity to regain eligibility for title IV aid by making satisfactory repayment arrangements if the borrower makes six payments during the course of rehabilitating a defaulted loan, but does not seek additional title IV aid after making those six payments. The proposed regulations would also extend the time period after the payment due date during which a payment is considered to be on-time for purposes of making satisfactory repayment arrangements in the FFEL and Direct Loan programs from 15 to 20 days, and would establish the same 20-day standard in the Perkins Loan Program. In addition, the proposed regulations would define the term ''satisfactory repayment arrangement'' more consistently across the title IV, HEA loan programs.

• The closed school loan discharge provisions in the Perkins Loan, FFEL, and Direct Loan program regulations would be revised to specify that a borrower who withdraws from a school prior to the school's closure may qualify for a discharge if the borrower withdraws not more than 120 days before the date the school closes, instead of the current standard of not more than 90 days. The proposed regulations would also add examples of the types of exceptional circumstances under which the Department may allow borrowers who withdraw from a school more than 120 days prior to the school's closure date to qualify for loan discharge.

• The FFEL Program enrollment status reporting requirements for institutions would be updated by eliminating outdated references to receiving enrollment reports from guaranty agencies and reporting enrollment status information to guaranty agencies, and by removing an obsolete requirement to report information about students who have ceased to be enrolled on a full-time basis. The Direct Loan Program enrollment status reporting requirements would be revised by eliminating obsolete references to the frequency with which the Department provides student status confirmation reports to schools and the format of those reports. Both the FFEL and Direct Loan program enrollment status reporting requirements for institutions would be updated to eliminate obsolete terms and procedures, reflect current processes, and require institutions to report certain enrollment status changes for recipients of any type of title IV loan. Comparable enrollment status reporting requirements would be added to the Perkins Loan Program regulations.

FFEL and Direct Loan Programs

• The proposed regulations would revise the terms under which a guaranty agency in the FFEL Program may authorize a lender to grant forbearance to permit a borrower or endorser to resume honoring the agreement to repay a debt after default but prior to claim payment. The proposed regulations would require the borrower or endorser to provide either a signed written repayment agreement or an oral affirmation of the repayment obligation. The proposed regulations would further provide that if a forbearance is granted based on the borrower's or endorser's oral request and affirmation of the obligation: (1) The forbearance may not exceed 120 days and cannot be granted for consecutive periods; (2) the lender must orally review with the borrower the terms and conditions of the forbearance, including the consequences of interest capitalization and other available repayment options; and (3) the lender must send a notice to the borrower or endorser that confirms the terms of the forbearance and the affirmation of the repayment obligation within 30 days of that affirmation. The proposed regulations would also define the term ''affirmation.'' Finally, the proposed regulations would add comparable forbearance provisions in the Direct Loan Program.

• The current FFEL Program forbearance provision for borrowers who are performing service that qualifies them for loan repayment under the student loan repayment program administered by the Department of Defense under 10 U.S.C. 2171 would be modified to also require lenders to grant forbearance to borrowers performing service that qualifies them for loan repayment under Department of Defense loan repayment programs that are authorized under 10 U.S.C. 2173 and 2174, and any other student loan repayment programs administered by the Department of Defense. A comparable forbearance provision would be added to the Direct Loan Program regulations.

• The conditions under which a FFEL Program lender may grant an administrative forbearance would be modified to include a circumstance in which a borrower is delinquent at the beginning of an authorized forbearance period, and a corresponding forbearance provision would be added to the Direct Loan Program regulations.

• The proposed regulations would include the following changes to the provisions governing loan rehabilitation in the Direct Loan and FFEL programs:

○ The Secretary or the guaranty agency, as applicable, would determine a borrower's reasonable and affordable payment amount under a loan rehabilitation agreement based on the borrower's and, if applicable, the borrower's spouse's current disposable income, family size, and reasonable and necessary expenses. The borrower would be required to provide the Secretary or guaranty agency with the information needed to determine the reasonable and affordable payment amount on a form approved by the Secretary and, if requested, would be required to provide supporting documentation. The proposed regulations would include a detailed list of the types of expenses that the Secretary or guaranty agency would consider in determining a borrower's reasonable and affordable rehabilitation payment amount.

○ The reasonable and affordable loan rehabilitation payment amount must not be: (1) A required minimum payment, such as $50, if the guaranty agency or the Secretary determines that a smaller amount is reasonable and affordable; (2) a percentage of the borrower's total loan balance; or (3) an amount based on any other formula or criteria unrelated to the individual borrower's total financial circumstances.

○ The Secretary or the guaranty agency would provide the borrower with a written rehabilitation agreement within 15 business days of the determination of the borrower's reasonable and affordable payment. The agreement would include: (1) The rehabilitation payment amount; (2) a prominent statement that the borrower may object to the payment amount and the method and timeframe for raising such an objection; (3) an explanation of the terms and conditions of the required series of payments, and the effects of loan rehabilitation; and (4) for a FFEL borrower, the amount of unpaid collection costs to be added to the unpaid principal of the rehabilitated

loan when the loan is sold to an eligible FFEL lender.

○ A borrower's rehabilitation payment amount would be recalculated if the borrower objects to the payment amount in the written repayment agreement. If the borrower objects to the amount determined based on an evaluation of income and expenses documented by the borrower, the Secretary or the guaranty agency would recalculate an alternative rehabilitation payment amount, based on documentation provided by the borrower, using the formula for calculating a monthly payment amount under the IBR plan in the Direct Loan and FFEL program regulations. If the recalculated amount using the IBR formula is less than $5, the borrower's recalculated monthly rehabilitation payment amount would be $5. The borrower may choose either rehabilitation payment amount.

○ While a borrower is making payments under a rehabilitation agreement, the Secretary or guaranty agency would limit contact with the borrower to collection activities required by law or regulation and communications that support the rehabilitation.

○ If a borrower who is making voluntary payments on a defaulted loan under a loan rehabilitation agreement is also making payments through AWG, the Secretary or guaranty agency would suspend collection through AWG after the borrower has made five qualifying monthly payments under the loan rehabilitation agreement. A borrower would have the option of requesting that the Secretary or guaranty agency continue collecting on the loan through AWG while the borrower continues to make voluntary payments under the loan rehabilitation agreement. A borrower would have only one opportunity to benefit from suspension of AWG while attempting to rehabilitate a defaulted loan.

Perkins Loan Program

• Schools that participate in the Perkins Loan Program would be required to use the same eligibility criteria used in the Direct Loan and FFEL programs to define an ''eligible graduate fellowship program'' and to establish the eligibility of a Perkins Loan borrower to receive a deferment while participating in a graduate fellowship program. The proposed regulations would add a definition of the term ''eligible graduate fellowship program'' to the Perkins Loan Program regulations consistent with the definition currently used in the Direct Loan and FFEL program regulations.

• The Perkins Loan economic hardship deferment eligibility criteria would be revised by eliminating the deferment category for borrowers who work less than full-time and have a specified debt-to-income ratio.

• The Perkins Loan rehabilitation provisions would be modified to specify that an ''on-time'' payment, for the purpose of loan rehabilitation, is a payment that is made within 20 days of the due date.

• For Perkins Loans that were made before September 13, 1982, the date the Secretary began requiring institutions to collect a borrower's Social Security Number (SSN) on the Perkins Loan Program promissory notes, the proposed regulations would allow assignment of those loans to the Secretary without the borrower's SSN.

• A Perkins Loan borrower who completes half of an academic year of teaching, but who is unable to complete the second half of the academic year due to a condition covered under the FMLA, would be able to count that year as a full year of eligible teaching service for loan cancellation purposes, if the borrower's employer considers the borrower to have fulfilled the teacher contract requirements for that academic year. In addition, the proposed regulations would allow a borrower who is unable to complete a full year of public service under other loan cancellation categories due to a condition covered under the FMLA to count that year as a full year of public service for loan cancellation purposes if the borrower completes at least six months of consecutive eligible service.

• If a Perkins Loan borrower who is performing service that qualifies the borrower for loan cancellation at a cancellation rate progression of 15 percent for the first and second years of qualifying service, 20 percent for the third and fourth years of qualifying service, and 30 percent for the fifth year of qualifying service, takes a job in a different field that qualifies the borrower under a different cancellation category that provides loan cancellation at the same cancellation rate progression as the prior category, the borrower's cancellation rate progression would be uninterrupted. The borrower's cancellation rate under the new cancellation category would continue from the last year the borrower received a cancellation under the former cancellation category, rather than reverting to the first-year cancellation rate of 15 percent.

FFEL Program

• The timeframe for FFEL lenders to send the required repayment disclosure for borrowers who are 60 days delinquent would be changed from five calendar days to five business days after the date the borrower becomes 60 days delinquent.

• The proposed regulations would eliminate the requirement for a lender to provide a repayment disclosure to a borrower who is having difficulty making payments if the borrower's difficulty has been resolved through contact resulting from an earlier disclosure or from other contact between the lender and the borrower.

• The proposed regulations would include the following changes to the rules governing AWG in the FFEL Program:

○ The proposed regulations would clarify the burden of proof that must be met by the borrower during the hearing process, specify the procedures that must be followed by the borrower and guaranty agency when objections are raised, and specify requirements that must be followed by a hearing official in determining whether the proposed withholding amount would cause a financial hardship for the borrower.

○ The regulations would be revised to provide more consistent treatment with respect to AWG for borrowers whose defaulted loans are held by a guaranty agency and borrowers whose defaulted loans are held by the Secretary.

○ Existing policy guidance related to functions that may be performed by third-party servicers or collection contractors retained by guaranty agencies for AWG purposes would be incorporated in the regulations, and the regulations would include examples of permissible activities of third-party contractors.

○ The regulations would be revised to more clearly describe the complete AWG process, from the initial garnishment notice to the withholding of the borrower's wages.

○ Regulations would be amended to better reflect due process requirements and to specify the functions, delegations of authority, recordkeeping requirements, and permissible activities of guaranty agencies and third-party servicers or collection contractors.

○ The regulations would be amended to specify the limitations on the amount that may be subject to AWG if a guaranty agency is garnishing pay from a borrower who is not already subject to a withholding order, and to clarify the withholding amount or percentage and priority if a guaranty agency is garnishing the pay of a borrower who is already subject to one or more withholding orders. The proposed regulations would also permit a greater

amount or percentage to be withheld with the borrower's consent.

○ The proposed regulations would require that for a borrower to receive a hearing before AWG begins, the borrower's written request for a hearing must be received on or before the 30th day following the date the garnishment notice was sent, instead of on or before the 15th day following the borrower's receipt of a garnishment notice, as under current regulations. The proposed regulations would also delete a provision that a borrower is considered to have received a garnishment notice five days following the date of the notice.

○ If a borrower's written request for a hearing is received by the guaranty agency after the 30th day following the date of the garnishment notice, the agency must provide the borrower a hearing and issue a decision within 60 days following receipt of the request. If a decision is not rendered within 60 days, the guaranty agency would be required to suspend the order beginning on the 61st day after the hearing request was received until a hearing is provided and a decision is rendered.

○ The proposed regulations would also: (1) Specify the information that a guaranty agency must provide in the AWG notice it sends to a defaulted borrower; (2) describe how an AWG hearing must be conducted, including with respect to the submission of additional evidence and the granting of continuances; (3) provide for the withholding order to end by either rescission of the order for AWG or full recovery of the amount owed by the borrower; and (4) clarify that a borrower who wishes to object that he or she should not be subject to garnishment because of involuntary separation from employment bears the burden of raising and proving that claim.

• To reflect the impact of the SAFRA Act, FFEL Program regulations governing loan origination and disbursement and related requirements and activities (for example, requirements for due diligence in the making and disbursing of loans) would be eliminated, except for certain school-based requirements and related activities (for example, exit counseling requirements).

• FFEL Program regulations that are obsolete (for example, rules governing the Federal Insured Student Loan (FISL) Program) would be eliminated.

• Conforming changes and technical corrections would be made as necessary throughout the regulations to ensure consistency and accuracy.

Direct Loan Program

• The Direct Loan Program regulations would be expanded by adding provisions that apply in the Direct Loan Program, but which are currently reflected in 34 CFR part 685 only by cross-reference to the FFEL Program regulations (for example, eligibility criteria for graduate fellowship and economic hardship deferments).

• The proposed regulations would remove provisions that are obsolete or that do not reflect current procedures used in administering the Direct Loan program, such as loan limit amounts that are no longer applicable because of recent statutory changes, and outdated school loan origination options and eligibility criteria for initial participation in the Direct Loan Program.

• The Direct Loan Program deferment regulations would be restructured for greater clarity.

• The exception to the minimum loan period requirement for clock-hour and certain non-term programs that allows a school to originate a loan for a transfer student to cover a period of enrollment shorter than the academic year or the program length only if the school accepts credit or clock hours from the school the student previously attended would be revised by removing the provision that limits the exception to situations in which the new school accepts transfer credits or clock hours from the prior school.

• Throughout the Direct Loan Program regulations, conforming changes would be made to reflect the impact of the SAFRA Act and other recent statutory changes, and other conforming changes and technical corrections would be made as necessary.

Significant Proposed Regulations

We group major issues according to subject, with appropriate sections of the proposed regulations referenced in parentheses. We begin with an issue that involves the Student Assistance General Provisions regulations in 34 CFR part 668, followed by issues that apply to all three title IV loan programs, issues that apply to the FFEL and Direct Loan programs, issues that apply only to the Perkins Loan Program, issues that apply only to the FFEL Program, and finally issues that apply only to the Direct Loan Program. We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory changes that are technical or otherwise minor in effect.

Student Assistance General Provisions

Three-Year Cohort Default Rate Participation Rate Index Challenges and Appeals (34 CFR 668.204 and 668.214)

Statute: Under section 435(a)(8) of the HEA, an institution's participation rate index (PRI) is determined by multiplying the institution's Direct Loan/FFEL cohort default rate (CDR) by the percentage of the institution's regular students, enrolled on at least a half-time basis, who received such a loan for a 12-month period ending during the six months immediately preceding the fiscal year for which the cohort of borrowers used to calculate the institution's CDR is determined. Effective for fiscal years beginning on and after October 1, 2011, section 435(a)(8)(A) of the HEA provides that an institution that demonstrates to the Secretary that its PRI is equal to or less than 0.0625 for any of the three most recent fiscal years for which data is available will not lose eligibility to participate in the FFEL and Direct Loan programs for having three three-year CDRs that are equal to or greater than 30 percent.

Current Regulations: Under section 668.206(a)(1), an institution that has one three-year CDR of over 40 percent loses its eligibility to participate in the FFEL and Direct Loan programs. Sections 668.204(c)(1)(i), 668.214(a)(1), and 668.214(d)(2) use a participation rate index of 0.06015 as the ceiling for successful PRI challenges and appeals brought by institutions having one three-year CDR of over 40 percent.

Proposed Regulations: Proposed §§ 668.204(c)(1)(i) and 668.214(a)(1) substitute 0.0832 as the PRI ceiling for purposes of challenges to and appeals from sanctions based on one three-year CDR of over 40 percent. Similarly, in proposed § 668.214(d)(2), ''0.06015'' is replaced with ''0.0832.''

Reasons: Under the statutory PRI ceiling of 0.0625, which applies to sanctions based on three three-year CDRs of 30 percent or higher, institutions can be excused from sanctions based on the percentage of Direct Loan and FFEL borrowers among their enrollment even if that percentage is as high as almost 21 percent, depending on the lowest of the institution's three excessive CDRs (0.30 CDR $\times$ 0.20 $<$ 0.0625 ceiling).

In contrast, using the current regulatory 0.06015 PRI ceiling for an institution that has a single three-year CDR of over 40 percent means that the cutoff for a successful PRI appeal of or challenge to the regulatory loss of eligibility is a borrower population

comprising no more than approximately 15 percent of enrollment (0.401 CDR × 0.15 = 0.06015 ceiling).

The Department is proposing to raise the PRI ceiling applicable to institutions that have a single three-year CDR of over 40 percent so that, as with the PRI challenge and appeal established by statute for three-year CDRs of 30 percent or higher, the institution can have borrower enrollment as high as almost 21 percent and still bring a successful PRI challenge to or appeal from the loss of eligibility (0.401 CDR × 0.20 < 0.0832).

Perkins Loan, FFEL, and Direct Loan Programs: Satisfactory Repayment Arrangements (34 CFR 674.2(b), 674.9(k), 682.200(b), 685.102(b), and 685.200)

Statute: Under section 428F(b) of the HEA, which is applicable to the Direct Loan Program under section 455(a)(1) of the HEA, a defaulted FFEL or Direct Loan borrower may regain eligibility for title IV student financial assistance if the borrower makes six consecutive, monthly payments on the defaulted FFEL or Direct Loan Program loan. The borrower may only regain eligibility once under this provision of the HEA.

Under section 464(h)(2) of the HEA, a defaulted Perkins Loan borrower may regain eligibility for title IV student financial assistance by making six on-time, consecutive, monthly payments on the defaulted Perkins Loan Program loan. As with FFEL and Direct Loan borrowers, a Perkins Loan borrower may only regain eligibility once under this provision of the HEA.

Current Regulations: In the Perkins Loan, FFEL, and Direct Loan programs, a defaulted borrower may regain eligibility for title IV student financial assistance by making satisfactory repayment arrangements with the loan holder. The term ''satisfactory repayment arrangement'' is defined in 34 CFR 674.2(b), 682.200(b), and 685.102(b) for the Perkins Loan, FFEL, and Direct Loan programs, respectively.

The ''satisfactory repayment arrangement'' definitions are slightly different for each of the three loan programs. For Perkins Loan borrowers, a satisfactory repayment arrangement is the making of six, on-time, consecutive, monthly payments on a defaulted loan. 34 CFR 674.2(b) (''Satisfactory repayment arrangement''). For FFEL and Direct Loan borrowers, for purposes of regaining eligibility, a satisfactory repayment arrangement is the making of six consecutive, on-time, voluntary, full monthly payments on a defaulted loan. 34 CFR 682.200(b) (''Satisfactory repayment arrangement'') and 685.102(b)(''Satisfactory repayment arrangement''). For FFEL and Direct Loan borrowers, an on-time payment is a payment made within 15 days of the due date. The Perkins Loan Program regulations do not specify a standard for on-time payments. The standard for an on-time payment is established by the institution that is collecting the Perkins Loan, or by the Secretary if the Secretary holds the loan.

The ''satisfactory repayment arrangement'' definitions in the FFEL and Direct Loan program regulations specify that voluntary payments are payments made directly by the borrower and do not include payments obtained by income tax offset, garnishment, or income or asset execution. These limitations are not in the Perkins Loan Program definition of ''satisfactory repayment arrangement,'' but are in § 674.9(j) of the Perkins Loan Program regulations.

The FFEL and Direct Loan program regulations specify that a borrower may only obtain the benefit of regaining title IV eligibility by making satisfactory repayment arrangements once. The Perkins Loan Program regulations state that a borrower may only obtain the benefit of regaining title IV eligibility by making satisfactory repayment arrangements on a defaulted loan once.

None of the definitions address the status of borrowers who, in the course of making rehabilitation payments on a defaulted title IV loan, also make the required number of payments to regain title IV eligibility under a satisfactory repayment arrangement.

Proposed Regulations: The proposed regulations would make the definitions of ''satisfactory repayment arrangement'' more consistent across the three title IV student loan programs. Proposed § 674.2(b) would add to the definition of ''satisfactory repayment arrangement'' in the Perkins Loan Program regulations the requirements that the monthly payments be ''voluntary'' and ''full.'' The proposed Perkins Loan Program regulations would also specify that voluntary payments are payments made by the borrower and do not include payments obtained by income tax offset, garnishment, or income or asset execution. The revised definition of ''satisfactory repayment arrangement'' in the Perkins Loan Program regulations would also specify that a borrower may only receive the benefit of regaining title IV eligibility by a satisfactory repayment arrangement once, not once on a defaulted loan, as in the current regulation.

The revisions to the ''satisfactory repayment arrangement'' definitions for the FFEL and Direct Loan programs in proposed §§ 682.200(b) and 685.102(b) would extend the length of time during which a payment would be considered on-time from within 15 days of the due date to within 20 days of the due date. The revision to the ''satisfactory repayment arrangement'' definition for the Perkins Loan Program in proposed § 674.2(b) would establish the same 20-day standard for an on-time payment.

The proposed regulations would add a new paragraph to the definitions of ''satisfactory repayment arrangement'' in §§ 674.2(b), 682.200(b), and 685.102(b) of the Perkins Loan, FFEL, and Direct Loan program regulations. The proposed new paragraph would provide that a borrower who makes six qualifying payments under an agreement to rehabilitate a loan, but who does not receive additional title IV aid prior to defaulting on the loan again, will not be considered to have used the one opportunity the borrower has to renew eligibility for title IV aid by making satisfactory repayment arrangements.

The proposed regulations would add a new § 674.9(k) to the Perkins Loan Program regulations, to provide that a borrower who is in default on a FFEL or Direct Loan program loan may regain eligibility to receive a Perkins Loan if the borrower makes satisfactory repayment arrangements on the FFEL or Direct Loan program loan, as determined by the loan holder. The proposed regulations would also revise § 685.200(d) of the Direct Loan Program regulations, by adding a reference to defaulted Perkins Loans as well as to defaulted FFEL and Direct Loan program loans.

Reasons: A defaulted borrower may regain eligibility for Federal student aid by making satisfactory repayment arrangements on a title IV loan. In addition, a borrower also has the option of rehabilitating a defaulted title IV loan by making a series of on-time, voluntary, full monthly payments as part of a rehabilitation agreement with the loan holder. To rehabilitate a loan in the Direct Loan or FFEL program, a borrower must make nine reasonable and affordable payments within 20 days of the due date during ten consecutive months. To rehabilitate a loan in the Perkins Loan Program, a borrower is required to make nine consecutive monthly payments. In the course of making loan rehabilitation payments, a title IV borrower may also make the six consecutive on-time monthly payments necessary to regain eligibility for title IV aid.

A borrower making payments under a loan rehabilitation agreement might not have plans to return to school or to seek additional title IV aid after making the

required payments. The Department has previously been asked whether a borrower who makes the six payments needed under satisfactory repayment arrangements in the course of making loan rehabilitation payments, but who does not request additional title IV aid, will automatically be considered to have used the one-time-only opportunity to regain eligibility by making satisfactory repayment arrangements. The Secretary's policy is that a borrower in this situation has not used the one-time opportunity to regain title IV eligibility by making satisfactory repayment arrangements unless the borrower receives title IV aid after regaining eligibility. As a result of these inquiries, the Secretary proposed amending the ''satisfactory repayment arrangement'' definitions in the Perkins Loan, FFEL, and Direct Loan program regulations to codify this policy. The negotiating committee agreed with the changes proposed by the Department.

The Secretary also proposed making the definition of ''satisfactory repayment arrangement'' more consistent across the three loan programs. The Secretary proposed removing the language in the Perkins Loan Program regulations that stated that a borrower may only obtain this benefit once ''on a defaulted loan.'' The proposed change would make the Perkins Loan Program definition consistent with the FFEL and Direct Loan program definitions, which state that a borrower may only obtain this benefit ''once.'' Non-Federal negotiators recommended that the ''on a defaulted loan'' language be added to the FFEL and Direct Loan program definitions, rather than removed from the Perkins Loan Program definition. The Secretary reviewed the Perkins Loan and FFEL program statutory provisions, and determined that the HEA restricts this benefit to once per borrower, not once per loan, in all three of the title IV student loan programs. Accordingly, the Secretary declined to accept this recommendation from the non-Federal negotiators.

Non-Federal negotiators recommended expanding the standard for an on-time payment in the FFEL and Direct Loan definitions of ''satisfactory repayment arrangements'' from within 15 days of the due date to within 20 days of the due date. They also recommended adding this on-time payment standard to the Perkins Loan Program definition. The negotiators noted that the 20-day standard is already established for loan rehabilitation payments, and believed that it would be appropriate to use the same standard for payments made under a satisfactory repayment arrangement. Using the same standard for on-time payments for purposes of satisfactory repayment arrangements and for purposes of loan rehabilitation would reduce complexity and confusion for borrowers and loan servicers. The Secretary agreed with the recommendation to have the same standard for on-time payments made under satisfactory repayment arrangements in the three title IV loan programs, and to make that standard consistent with the standard for rehabilitation payments.

The Secretary proposed revising the Perkins Loan and Direct Loan student and borrower eligibility regulations to specify that a defaulted FFEL or Direct Loan program borrower can qualify for a new Perkins Loan by making satisfactory repayment arrangements on the defaulted loan, and to specify that a defaulted Perkins Loan Program borrower can qualify for a new Direct Loan by making satisfactory repayment arrangements. Sections 428F(b) and 455(a)(1) of the HEA already provide for this treatment, and the Secretary proposed revising the Perkins and Direct Loan program regulations to more closely match these HEA statutory provisions.

Closed School Discharge (34 CFR 674.33(g), 682.402(d), and 685.214)

Statute: Sections 437(c)(1) (which is applicable to the Direct Loan Program under section 455 of the HEA) and 464(g) of the HEA provide for a closed school discharge for borrowers in the Perkins Loan, Direct Loan, and FFEL programs who are unable to complete a program of study because of a school closure.

Current Regulations: Under §§ 674.33(g), 685.214, and 682.402(d) of the Department's current regulations, borrowers in the Perkins Loan, Direct Loan, and FFEL programs (and PLUS loan endorsers) may receive a loan discharge if the borrower (or the student on whose behalf a parent borrowed) could not complete the program of study at the school because the school closed while the borrower (or student) was enrolled, or if the borrower (or student) withdrew from the school no more than 90 days before the school closed.

Sections 674.33(g), 685.214, and 682.402(d) of the Department's regulations provide that the 90-day period may be extended if the Secretary determines that exceptional circumstances related to the school closure justify an extension. The school's closure date is the date the school ceases to provide educational instruction in all of its programs, as determined by the Secretary. For closed school discharge purposes a ''school'' is the school's main campus, or any location or branch of the main campus, regardless of whether the school or its location or branch is considered eligible for title IV purposes.

Proposed Regulations: Proposed §§ 674.33(g)(4)(i)(B), 682.402(d)(1)(i), and 685.214(c)(1)(ii), respectively, would extend the current 90-day window for students who leave before a school closes to 120 days, and add examples of the types of exceptional circumstances under which the Department may extend the 120-day window. Specifically, the proposed regulations would list the following examples of exceptional circumstances for this purpose: The school's loss of accreditation; the school's discontinuation of the majority of its academic programs; action by the State to revoke the school's license to operate or award academic credentials in the State; or a finding by a State or Federal government agency that the school violated State or Federal law.

Reasons: During the public hearings prior to the initiation of the negotiated rulemaking sessions, some commenters suggested that the 90-day window for student withdrawal prior to a school's closure date may be too short because there may be numerous signs of a school's pending closure that may prompt a student to withdraw more than 90 days prior to the school's closure date. The commenters also noted that the Department has not previously provided examples in the regulations of the exceptional circumstances under which the Department would extend the 90-day window.

To inform the discussions around the closed school discharge, the Department presented information to the negotiating committee on its experience with closed school discharges. In the last five years, 128 schools that participated in the title IV programs have closed. The primary reason for the school closures has been the loss of accreditation. Of the 128 schools that closed, 82 were proprietary schools.

The non-Federal negotiators raised many questions about the Department's implementation of the statutory requirement that a school must close in order for the borrower to receive a loan discharge. Some negotiators argued that the closed school discharge should include instances in which a program at the school is discontinued but the school continues to operate, especially in the case of a school that offers many of its programs online and which does not associate its online programs with a

physical location. The non-Federal negotiators asked the Department to clarify whether students would be eligible for a closed school loan discharge if a school discontinued one of its traditional or online programs.

In response to the negotiators' questions, the Department noted that for a borrower to receive a loan discharge, current regulations require that the school must close. Under §§ 674.33(g), 682.402(d), and 685.214(a), the term ''school'' means a school's main campus or any location or branch of the main campus, and a school is considered closed as of the date that the school ceases to provide education in all programs. The law and regulations do not provide a loan discharge when a program, either traditional or distance, is discontinued. The Department also noted that distance education programs are not locations of a school for title IV eligibility purposes. A location is a physical site where a student can receive instruction in 50 percent or more of an eligible program. If a school offers online programs, the online programs are considered associated with the main campus of the school. Thus, a borrower enrolled in an online course would receive a closed school discharge only if the main campus of the school closed.

The Department proposed expanding from 90 to 120 days the window in which a student must be enrolled at a school that closed for a borrower to receive the closed school loan discharge. Expanding the window should help address the circumstances under which a borrower has enough information to determine that a school is not providing an appropriate education and may close and withdraws from the school prior to its formal closure date. The Department believes that the extra time would help borrowers who are in this situation and would allow them to take advantage of other opportunities, such as the option to take advantage of a teach-out plan.

The non-Federal negotiators agreed that this change would be beneficial for borrowers and should be made.

In response to public commenters' requests that the Department provide examples of exceptional circumstances that might justify an extension of the window under §§ 674.33(g), 682.402(d), and 685.214(c), the Department invited the non-Federal negotiators to provide examples of what they believed should be considered exceptional circumstances. After much discussion, some of the non-Federal negotiators recommended that the following examples be included in the proposed regulations: The school's loss of accreditation; the school's discontinuation of the majority of its academic programs; action by the State to revoke the school's license to operate or award academic credentials in the State; or a finding by a State or Federal government agency that the school violated State or Federal law.

In response to a question from some negotiators, in regard to the last of the listed examples, we note that we would consider the term ''finding'' to refer to a conclusion in a final or formal document issued by the State or Federal agency.

Some non-Federal negotiators believed that it was particularly important to treat as an exceptional circumstance a school's discontinuance of the majority of its programs. Those negotiators noted that while it is highly improbable that a school will be able to continue its operations after closing the majority of its programs, there is a possibility that a school in this situation will remain open. In light of the fact that a borrower cannot receive a loan discharge based upon a single discontinued program, the non-Federal negotiators believed this language would cover the exception and provide relief for affected borrowers.

It is important to note that, although the Secretary would view the cited examples as exceptional circumstances, these examples would not be exclusive or otherwise narrow the scope of exceptional circumstances that the Secretary would consider. The Secretary has the discretion to consider other extenuating circumstances that may warrant a closed school loan discharge for a borrower who withdrew from a school more than 120 days before the school closed. As the Department noted during the negotiated rulemaking session, the Secretary determines whether exceptional circumstances exist on a case-by-case basis and takes into account the facts of the particular situation.

The Secretary also wants to note that the listing of these examples is not intended to provide borrowers with a guaranteed right to a discharge. The Secretary would still need to determine that the situation presents exceptional circumstances justifying an extension of the 120-day window. Moreover, these examples are not intended to provide a borrower with a private right of action against the school; these examples would not establish any rights between the student and the school.

After much deliberation and discussion between the Department and the non-Federal negotiators, the Department and the non-Federal negotiators reached consensus on the proposed changes to the closed school loan discharge regulations.

School Enrollment Status Reporting Requirements (34 CFR 674.61, 682.605, 682.610, and 685.309)

Statute: Section 428(b)(1)(P) of the HEA requires a borrower who received a FFEL Program loan to notify the school of any change in the borrower's local address while the borrower is enrolled. It also requires the borrower and the school to promptly notify the loan holder, either directly or through the guaranty agency, if there is a change in the borrower's permanent address, if the student ceases to be enrolled on at least a half-time basis, or if there is any other change in status that affects the student's eligibility for the loan.

Section 454(a)(1)(E)(i) of the HEA requires a school that participates in the Direct Loan Program to provide the Secretary with timely and accurate information concerning the status of student borrowers (and students on whose behalf parents borrow Direct PLUS Loans) while the students are in attendance at the school, and any new information related to students or parents after the borrowers leave the school. This information is provided to the Secretary to assist in the servicing and collection of Direct Loan Program loans.

Section 487(a)(3) of the HEA requires a school that participates in a program under title IV of the HEA to establish and maintain such administrative and fiscal procedures and records as are necessary to ensure the proper and efficient administration of funds received from the Secretary or from students. Upon request and in a timely manner, schools must provide information relating to their administrative capability and financial responsibility to the Secretary, the appropriate guaranty agency, and the appropriate accrediting agency or association. In addition, section 487(a)(5) of the HEA requires a school that participates in the title IV, HEA programs to submit reports to the Secretary (and to the holders of loans made to the institution's students) at such times and containing such information as the Secretary requires to carry out the purpose of title IV of the HEA.

Current Regulations: For the FFEL Program, current § 682.610(c) requires a school, upon receipt of a student status confirmation report from the Secretary or a similar report from a guaranty agency, to complete and return the report to the Secretary or guaranty agency, as appropriate. Unless the school expects to submit its next

student status confirmation report to the Secretary or guaranty agency within the next 60 days, the current regulations require a school to notify the guaranty agency or lender within 30 days if the school discovers that a student who received a FFEL Program loan has changed his or her permanent address, or discovers that: (1) A FFEL Program loan has been made to or on behalf of a student who enrolled at the school, but who has ceased to be enrolled on at least a half-time basis; (2) a loan has been made to or on behalf of a student who has been accepted for enrollment, but who failed to enroll on at least a half-time basis; or (3) a loan has been made on behalf of a full-time student who has ceased to be enrolled on a full-time basis. Current § 682.605(b) provides that if a student withdraws, the school must use the withdrawal date determined under § 668.22(b) or 668.22(c), as applicable, for the purpose of reporting to the lender the date that the student withdrew from the school. Current § 682.605(c) provides that, for the purpose of a school's reporting to the lender, a student's withdrawal date is the month, day, and year of the withdrawal date.

For the Direct Loan Program, current § 685.309(b) includes provisions comparable to § 682.610(c). That regulation requires schools participating in the Direct Loan Program to submit student status confirmation reports and information about address and enrollment status changes to the Secretary. However, there is no requirement for a school to report that a full-time student who received a Direct Loan has ceased to be enrolled on a full-time basis, as is the case in the FFEL Program under § 682.610(c)(2)(iii). In addition, current §§ 685.309(b)(3) and 685.309(b)(4) specify that the Secretary provides student status confirmation reports to a school at least semi-annually, and that the Secretary may provide these reports in either paper or electronic format.

For the Perkins Loan Program, current regulations do not include enrollment reporting requirements for schools comparable to the FFEL and Direct Loan program requirements.

Proposed Regulations: For the Perkins Loan Program, the proposed regulations would add a new § 674.19(f) with the heading ''Enrollment reporting process.'' Proposed § 674.19(f)(1) would provide that, upon receipt of an enrollment report from the Secretary, an institution must update all information included in the report and return the report to the Secretary in the manner and format and within the timeframe prescribed by the Secretary. Proposed § 674.19(f)(2) would provide that, unless it expects to submit its next updated enrollment report to the Secretary within the next 60 days, an institution must notify the Secretary within 30 days after the date the school discovers that: (1) A loan under title IV of the HEA was made to a student who was enrolled or accepted for enrollment at the institution, and the student has ceased to be enrolled on at least a half-time basis; (2) a student failed to enroll on at least a half-time basis for the period for which a loan was intended; or (3) a student who is enrolled at the institution and who received a loan under title IV of the HEA has changed his or her permanent address.

For the FFEL Program, the proposed regulations would retitle § 682.610(c) ''Enrollment reporting process,'' and replace the term ''student status confirmation report'' with ''enrollment report.'' They would also revise § 682.610(c)(1) to provide that, upon receipt of an enrollment report from the Secretary, a school must update all information included in the report and return the report to the Secretary in the manner and format and within the timeframe specified by the Secretary. Proposed § 682.610(c)(2) would provide that, unless a school expects to submit its next updated enrollment report to the Secretary within the next 60 days, the school must notify the Secretary within 30 days after the date the school discovers that: (1) A title IV loan was made to or on behalf of a student who was enrolled or accepted for enrollment at the school, and the student has ceased to be enrolled on at least a half-time basis; (2) a student failed to enroll on at least a half-time basis for the intended loan period; or (3) a student who is enrolled at the school and who has received a loan under title IV of the HEA has changed his or her permanent address. References in the current regulations to receiving enrollment reports from a guaranty agency or reporting enrollment status information to guaranty agencies would be removed. The proposed regulations would also amend §§ 682.605(b) and 682.605(c) to require schools to report information about a student's withdrawal to both the lender and the Secretary.

For the Direct Loan Program, the proposed regulations would retitle § 685.309(b) ''Enrollment reporting process,'' and replace the term ''student status confirmation report'' with the term ''enrollment report.'' It would also revise § 685.309(b)(1) to provide that upon receipt of an enrollment report from the Secretary, a school must update all information included in the report and return the report to the Secretary in the manner and format and within the timeframe prescribed by the Secretary. Proposed § 685.309(b)(2) would provide that, unless a school expects to submit its next updated enrollment report to the Secretary within the next 60 days, the school must notify the Secretary within 30 days after the date the school discovers that: (1) A title IV, HEA program loan was made to or on behalf of a student who was enrolled or accepted for enrollment at the school, and the student has ceased to be enrolled on at least a half-time basis; (2) the student failed to enroll on at least a half-time basis for the intended loan period; or (3) a student who is enrolled at the school and who received a title IV loan has changed his or her permanent address. Current §§ 685.309(b)(3) and 685.309(b)(4) would be removed.

Reasons: The current FFEL and Direct Loan program regulations in §§ 682.610(c) and 685.309(b) reflect terminology and procedures that are not consistent with current practices. These obsolete provisions include the use of the term ''student status confirmation report,'' the references in the FFEL Program regulations to receiving enrollment reports from guaranty agencies and reporting information to guaranty agencies, and the references in the Direct Loan Program regulations to the frequency with which the Secretary provides student status confirmation reports and the format of those reports. In addition, the current FFEL Program provision requiring a school to report that a student has ceased to be enrolled on a full-time basis reflects an obsolete eligibility requirement. The proposed regulations would revise §§ 682.605(a) and 685.309(b) to reflect the current processes by which schools receive and report student enrollment status information. The proposed regulations would also provide the Secretary with greater flexibility to modify enrollment reporting procedures in the future by providing that schools must update all information included in the enrollment report received from the Secretary and return the report to the Secretary in the manner and format and within the timeframe specified by the Secretary. Further, the proposed regulations would replace the current provisions in the FFEL Program regulations that require a school to report certain status changes only for their students who received FFEL Program loans, and the comparable provisions in the Direct Loan Program regulations that require schools to report information only for students who received Direct Loan Program loans, with a more general

requirement for schools to report these status changes for students who received any type of title IV loan. The Department believes that it is appropriate to establish this more general requirement, since the National Student Loan Data System (NSLDS) enrollment reporting files that schools receive from the Department include all of a school's students who have received loans under the Direct Loan, FFEL, or Perkins Loan programs. The proposed changes to the FFEL and Direct Loan program regulations described here would also be incorporated in the proposed new enrollment status reporting requirements for the Perkins Loan Program that are discussed later in this section.

To reflect current procedures, current §§ 682.605(b) and 682.605(c) would be modified to state that a school must report information about student withdrawals to both the FFEL Program lender and the Secretary.

Schools that participate in the Perkins Loan Program have indicated to the Department's NSLDS staff that having enrollment status information on Perkins borrowers from all schools attended by the borrowers would improve loan servicing in the Perkins Loan Program. In response to this request, the Department modified the NSLDS enrollment reporting file sent to schools by the Department to include, beginning in June 2012, all of the school's students who received a Perkins Loan for attendance at any school. Perkins Loan schools, or their servicers, may enroll with NSLDS to receive enrollment data on their Perkins Loan recipients. This will help schools track their former students who have enrolled at other schools, and will allow schools to use NSLDS for enrollment verification rather than having to rely on paper Perkins Loan enrollment verification forms. Proposed § 674.61(f) would establish enrollment reporting requirements for Perkins Loan schools to support this new process.

To ensure more timely reporting of certain student status changes, the Department initially proposed to modify current § 682.610(c)(2) to provide that, unless a school expects to submit its next updated enrollment report to the Secretary within the next 60 days, a school must notify the Secretary within 15 days (instead of the current 30 days) after the date the school discovers that certain status changes have occurred. The Department proposed to make the same change to current § 685.309(b)(2), and to incorporate the 15-day reporting deadline in proposed § 674.19(f). Although the non-Federal negotiators generally had no objections to the Department's proposed changes to enrollment status reporting requirements, some of the negotiators expressed concerns about the proposed change from a 30-day reporting deadline to a 15-day deadline. Those negotiators were concerned that it may be difficult for some schools to report the required information within this shorter timeframe. These negotiators asked that the Department retain the current 30-day reporting deadline. After further consideration, the Department agreed to retain the current 30-day deadline.

FFEL and Direct Loan Program Common Issues Forbearance for Borrowers Who Are 270 or More Days Delinquent Prior to Guaranty Agency Default Claim Payment or Transfer by the Department to Collection Status (34 CFR 682.211(d) and 685.205)

Statute: Section 435(l) of the HEA defines default on a loan as being 270 days past due in the case of a loan that is repayable in monthly installments. Section 428(c)(3) of the HEA specifies that a guaranty agency is not precluded from permitting the parties to a FFEL Program loan from entering into a forbearance agreement solely because the loan is in default. Under section 455(a)(1) of the HEA, Direct Loans have the same terms and conditions as FFEL Program loans unless provided otherwise.

Current Regulations: Section 682.211(b)(1) of the FFEL Program regulations provides that a lender may grant forbearance if the lender and the borrower or endorser agree to the terms of a forbearance and, unless the agreement was in writing, the lender sends a notice to the borrower or endorser confirming the terms of the forbearance within 30 days of the agreement and records the terms of the forbearance in the borrower's file. Section 682.211(c) of the FFEL regulations provides that a lender may grant a forbearance for up to one year at a time if both the borrower or endorser and the lender agree to the terms of the forbearance. If the lender and the borrower or endorser agree to the terms of the forbearance orally, the lender must send a notice to the borrower or endorser confirming the terms of the forbearance within 30 days of the agreement.

Section 682.211(d) of the FFEL regulations provides that a guaranty agency may authorize a lender to grant forbearance to permit a borrower or endorser to resume honoring the agreement to repay the debt after the borrower has defaulted on a loan but before the guaranty agency has paid the lender's default claim. The regulations further provide that the terms of the forbearance in this situation must include a new agreement to repay the debt signed by the borrower.

The Direct Loan Program regulations governing forbearance in § 685.205 do not include a comparable forbearance provision for borrowers who are 270 or more days past due on loan payments. However, Direct Loan borrowers are granted forbearance under the same circumstances based on the borrower's written or oral request.

Proposed Regulations: The proposed regulations would amend current § 682.211(c) to provide that if the forbearance is granted based on the borrower's or endorser's oral request and oral agreement to the terms of the forbearance, the lender must send a notice confirming the terms of the agreement within 30 days of the agreement. Section 682.211(d) of the proposed regulations would also be amended to specify in paragraph (d)(1) that in the case of a forbearance granted to a borrower or endorser who is in default, but prior to default claim payment, the forbearance agreement must include either a new agreement to repay the debt signed by the borrower or endorser, or a written or oral affirmation of the borrower's or endorser's obligation to repay the debt. Proposed § 682.211(d)(2) of the FFEL regulations would require that if a forbearance in this situation is based on the borrower's or endorser's oral request and affirmation of the obligation to repay the debt: (1) The forbearance period is limited to 120 days; (2) forbearance cannot be granted for consecutive periods; (3) the lender must orally review with the borrower the terms and conditions of the forbearance, including the consequences of interest capitalization and other repayment options available to the borrower; and (4) the lender must send the borrower or endorser a notice that confirms the terms of the forbearance and the borrower's or endorser's affirmation of the obligation to repay the debt within 30 days of that agreement, and must retain a record of the terms and conditions of the forbearance and affirmation in the borrower's or endorser's file. Finally, proposed § 682.211(d)(3) would define ''affirmation'' for this purpose as an acknowledgement of the loan by the borrower or endorser in a legally binding manner that can take the form of, but is not limited to: (1) A new signed repayment agreement or schedule, or another form of signed agreement to repay the debt; (2) an oral acknowledgment and agreement to

repay the debt documented by the lender in the borrower's or endorser's file and confirmed by the lender in a notice to the borrower; or (3) a payment made on the loan by the borrower or endorser.

The proposed regulations would also add comparable forbearance provisions to § 685.205(a) for the Direct Loan Program.

Reasons: Prior to the formal negotiated rulemaking sessions, the Department received public comments requesting that § 682.211(d) of the FFEL regulations be amended to eliminate the requirement that a lender collect a signed repayment agreement from the borrower as a condition for granting a forbearance to a borrower who is in default on a loan for which the guaranty agency has not yet paid the default claim to the lender. Commenters noted that under the Department's current procedures, a forbearance may be granted to a defaulted Direct Loan borrower under the same circumstances without a signed repayment agreement. These commenters argued that the same terms and conditions for granting a forbearance to a defaulted borrower should apply in both programs.

During the negotiations, the Department stated its preference for retaining the requirement for a signed repayment agreement in the FFEL regulations and, for consistency, adding a comparable provision to the Direct Loan Program regulations. The Department indicated that it believes a written affirmation of the debt by a borrower who is in default after failing to make payments for 270 or more days increases the prospect that the borrower will resume repayment following the end of the forbearance period. Some non-Federal negotiators argued that lenders should have maximum flexibility to work with borrowers at the late stages of delinquency to avoid the negative consequences of default and supported a policy of allowing a lender to grant forbearance based on an oral request and oral affirmation of the debt documented in the borrower's file. One non-Federal negotiator noted that granting forbearance to a borrower who is more than 270 days delinquent is a matter of lender discretion and would be granted only when appropriate. Another non-Federal negotiator disagreed with permitting oral affirmation of the debt without a separate acknowledgment of the affirmation from the borrower that would become part of the forbearance agreement.

Some negotiators raised the issue of whether a written forbearance request and affirmation is demonstrably more effective at ensuring a borrower's successful repayment following the end of a forbearance period than an oral request and affirmation. To address this issue, Department staff and lender servicing representatives reviewed data on delinquent and defaulted accounts on which forbearance was granted, but determined that most servicing systems did not capture the method used to request the forbearance. Limited data available from one servicer of Department-held loans suggested there was virtually no difference in successful repayment outcomes for borrowers making written requests and providing written affirmation of the debt versus those making an oral request and providing an oral affirmation of the debt. Taking all of these considerations into account, the negotiating committee agreed on the approach in the proposed regulations which permits forbearance based on the borrower's oral affirmation of the debt but requires the lender to follow-up on the oral agreement by sending a written notice to the borrower.

Non-Federal negotiators representing State Attorneys General raised concerns about the possible misuse of oral forbearance requests and affirmations by institutions of higher education that might try to manipulate their default rates. They requested that the Department consider ways to address the potential for abuse they believed was inherent in an oral forbearance request and authorization process by requiring verification of the identity of the borrower through the use of voice recognition software or telephone recordings of the borrower's request and affirmation. The Department noted that any conversation between a borrower and a lender servicer could lead to a forbearance agreement and, given applicable consent requirements, this proposal could necessitate recording all loan servicing calls with borrowers. The Department also noted that due to varying State laws on recording of conversations, it was not feasible to add a requirement to program regulations that would ensure compliance with all State laws. The Department agreed to monitor the use of forbearances in its oversight of schools and third-party servicers who are working on default aversion services on behalf of the schools.

The State Attorneys General representatives and student and consumer advocate representatives provided evidence to the negotiating committee that suggested that some institutions were attempting to manage their student loan cohort default rates by convincing borrowers to request forbearances for the cohort default rate period, whether or not it benefited the borrower. This could allow the institution to evade the consequences of high default rates. To address this potential problem, the Department agreed to include a limit of 120 days on any forbearance granted to a defaulted borrower or endorser based on an oral request and affirmation, and to prohibit a servicer from granting the borrower or endorser consecutive 120-day period forbearances.

Some non-Federal negotiators also expressed concern that granting forbearance to a defaulted borrower or endorser may simply delay a default claim payment or transfer of the loan for default collections if the borrower or endorser is not provided with information on other repayment options. The Department agreed that a lender should be required to orally review with the borrower the various repayment options available to the borrower for any forbearance that is based on an oral request and affirmation. The Department also reminded the non-Federal negotiators that information on available repayment plans is disclosed to delinquent borrowers in their monthly billing statements prior to default claim filing or the transfer of the loan to default collections, and as part of due diligence and default aversion efforts in the FFEL and Direct Loan programs.

Forbearance Provisions for Borrowers Receiving Department of Defense Student Loan Repayment Benefits (34 CFR 682.211(h) and 685.205)

Statute: Section 428(c)(3)(A)(i)(IV) of the HEA requires that, upon the borrower's request, a FFEL lender shall grant forbearance in renewable 12-month intervals to a borrower who is eligible for interest payments to be made on his or her loans under the repayment benefit program authorized in 10 U.S.C. 2174 for service in the Armed Forces. Under section 428(c)(3)(A)(ii)(II) of the HEA, this forbearance may not exceed three years. Under section 455(a)(1) of the HEA, this forbearance is also available to eligible Direct Loan borrowers.

Current Regulations: The mandatory forbearance for borrowers who are eligible for interest payments under the loan repayment program authorized in 10 U.S.C. 2174 is reflected in 34 CFR 682.211(h)(2)(ii)(B), but the current regulations include an incorrect statutory citation. There is no comparable provision in the Direct Loan Program regulations governing forbearance at 34 CFR 685.205.

Proposed Regulations: The proposed regulations would amend 34 CFR 682.211(h)(2)(ii)(B) of the FFEL regulations to require that lenders grant forbearance to borrowers who are performing service that qualifies them for loan repayment under the Department of Defense student loan repayment programs authorized by 10 U.S.C. 2171, 2173, or 2174, or under any other student loan repayment programs administered by the Department of Defense. We are also proposing to amend 34 CFR 685.205(a)(9) of the Direct Loan Program regulations to include a comparable forbearance provision.

Reasons: Current FFEL regulations require a lender to grant forbearance to a borrower who is performing service that qualifies the borrower for a partial repayment of his or her loan only under the Student Loan Repayment Programs authorized under 10 U.S.C. 2171. During the public hearings prior to the formal negotiated rulemaking sessions, a number of commenters recommended that the regulations be revised to also include borrowers who receive benefits under other student loan repayment programs administered by the Department of Defense. The commenters also noted that there is no comparable forbearance provision in the Direct Loan Program regulations and recommended that one be added to ensure consistency between the two programs. The negotiating committee agreed that these regulatory changes should be made.

Borrowers Who Are Delinquent When an Authorized Forbearance Is Granted (34 CFR 682.211(f) and 685.205)

Statute: Under section 428(c)(3) of the HEA, FFEL Program lenders may exercise certain administrative forbearances that do not require the agreement of the borrower under conditions specified by the Secretary. The HEA specifies that such forbearances shall include forbearances for borrowers who are delinquent at the time an authorized period of deferment is granted and for borrowers who are less than 60 days delinquent on their loans at the time the loan is sold or transferred to another entity.

Current Regulations: The conditions under which a FFEL Program lender may grant an administrative forbearance, a form of forbearance that does not require a request and documentation from the borrower, are specified in 34 CFR 682.211(f). In addition to the circumstances identified in the HEA for granting such a forbearance, the regulations also authorize a FFEL Program lender to grant an administrative forbearance in a number of other circumstances, including: (1) If the borrower has payments that are overdue at the beginning of a properly granted period of deferment for which the lender learns the borrower did not qualify; or (2) a forbearance period not to exceed three months when the lender determines that a borrower's ability to make payments has been adversely affected by a natural disaster, a local or national emergency as declared by the appropriate government agency, or a military mobilization. The current regulations do not authorize a forbearance for a period in which a borrower has payments that are overdue at the beginning of an authorized period of forbearance.

Proposed Regulations: The proposed regulations would amend 34 CFR 682.211(f) to authorize a lender to grant an administrative forbearance to a borrower who is delinquent at the beginning of an authorized period of forbearance and would add a corresponding provision to the Direct Loan regulations in 34 CFR 685.205(b).

Reasons: Under the FFEL Program regulations, a borrower who is delinquent at the beginning of an authorized period of forbearance will remain in a delinquent payment status on the loan at the end of the authorized forbearance period, unless the borrower provides the lender with documentation to support granting an authorized forbearance that covers the borrower's entire period of delinquency. During the public comment period prior to the beginning of the formal negotiated rulemaking sessions, representatives of FFEL lenders and loan servicers asked the Department to amend the regulations to authorize FFEL lenders to grant administrative forbearances to borrowers to eliminate a period of delinquency prior to the borrower's authorized forbearance period that is not covered by the authorized forbearance, to ensure that the borrower is current in repayment at the end of the authorized forbearance period. The negotiating committee agreed that such a change would be beneficial for borrowers and would reduce the likelihood that a borrower will be confused if the borrower finds that the loan is considered delinquent at the end of a significant period of authorized forbearance. For purposes of consistency, the negotiating committee also agreed to include a comparable provision in 34 CFR 685.205(b) of the Direct Loan Program regulations.

Loan Rehabilitation Agreement: Reasonable and Affordable Payment Standard (34 CFR 682.405(b) and 685.211(f))

Statute: Under section 428F of the HEA, a borrower may rehabilitate a defaulted FFEL loan if the borrower makes at least nine payments on the loan, each of which is made within 20 days of its scheduled due date and all of which are made over a period of 10 consecutive months beginning with the month in which the first scheduled payment is to be made under the rehabilitation agreement. Once the borrower meets this standard the guaranty agency must, if practicable, sell the defaulted FFEL loan to an eligible lender. The guaranty agency may not demand from the borrower a monthly rehabilitation payment amount that is more than is reasonable and affordable based on the borrower's total financial circumstances. After selling the loan to an eligible FFEL lender, the guaranty agency must request any consumer reporting agency to which the guaranty agency reported the loan default to remove the record of default from the borrower's credit history. The requirements in section 428F(a) of the HEA also apply to defaulted FFEL loans held by the Secretary.

Section 428F(a)(1)(D)(i)(II)(aa) of the HEA authorizes a guaranty agency to charge the borrower collection costs not in excess of 18.5 percent of the outstanding principal and interest at the time the guaranty agency sells the rehabilitated loan to an eligible lender.

Current Regulations: Sections 685.211(f)(1) and 682.405(b)(1) of the Direct Loan and FFEL program regulations provide that the Secretary (for Direct Loans) and the guaranty agency (in FFEL) will provide a loan rehabilitation program for defaulted Direct Loan and FFEL borrowers. To rehabilitate a defaulted loan, a Direct Loan or FFEL borrower who requests rehabilitation must make nine, monthly, voluntary, on-time payments within a ten-month period. The payments must be for the full monthly payment amount required under the rehabilitation agreement, and must be received by the Secretary or the guaranty agency within 20 days of the payment due date. The monthly rehabilitation payment amount must be reasonable and affordable as determined by the Secretary under § 685.211(f)(1) of the Direct Loan regulations or by the guaranty agency under § 682.405(b)(1)(iii) of the FFEL regulations.

The Direct Loan Program regulations in § 685.211(f)(1) state that the Secretary's determination of reasonable

and affordable payment amounts will be based on the borrower's total financial circumstances. Under § 682.405(b)(1)(iii)(A), a guaranty agency's determination of reasonable and affordable includes a consideration of the disposable income of the borrower and the borrower's spouse and of the borrower's reasonable and necessary expenses. Reasonable and necessary expenses include, but are not limited to: housing, utilities, food, medical costs, work-related expenses, dependent care costs, and repayment of other title IV loans.

Section 682.405(b)(1)(iii)(B) of the FFEL regulations specifies that a reasonable and affordable payment amount may not be a required minimum payment amount, such as $50, if the guaranty agency determines that a smaller amount is reasonable and affordable based on the borrower's total financial circumstances. If the guaranty agency determines that a reasonable and affordable payment for the borrower is less than $50 or the monthly accrued interest on the loan, whichever is greater, the agency must include documentation in the borrower's file supporting that determination.

Section 682.405(b)(1)(iii)(C) requires a guaranty agency to base its determination of a reasonable and affordable rehabilitation payment on documentation provided by the borrower, or from other sources. The documentation that may be considered includes, but is not limited to:

- Evidence of current income (such as proof of welfare benefits, Social Security benefits, child support, veterans' benefits, Supplemental Security Income, Workmen's Compensation, the two most recent pay stubs, the most recent copy of a U.S. income tax return, or State Department of Labor reports);
- Evidence of current expenses (such as a copy of the borrower's monthly household budget on a form provided by the guaranty agency); and
- A statement of the unpaid balance on all FFEL loans held by other lenders.

Section 682.405(b)(1)(v) authorizes a FFEL borrower to request that the guaranty agency adjust the monthly payment amount due to a change in the borrower's total financial circumstances. The borrower must provide documentation supporting this request to the guaranty agency.

Section 682.405(b)(1)(vi) requires a guaranty agency to provide a FFEL borrower with a written statement confirming the borrower's reasonable and affordable payment amount. The written statement must explain any other terms and conditions applicable to the required series of payments that the borrower must make before the borrower's account can be considered for repurchase by an eligible FFEL lender. The statement must inform the borrower of the effects of loan rehabilitation, and of the amount of the collection costs that will be added to the unpaid principal at the time the loan is sold to a FFEL lender. The collection costs may not exceed 18.5 percent of the unpaid principal and accrued interest at the time of the sale.

Section 682.405(b)(1)(vii) requires a guaranty agency to provide a FFEL borrower with an opportunity to object to the terms of the rehabilitation agreement.

Section 682.405(b)(2) requires a guaranty agency to attempt to secure a lender to purchase the loan after the borrower makes the required number of qualifying rehabilitation payments.

Section 682.405(b)(3)(i)(B) requires the guaranty agency, within 45 days of selling a rehabilitated loan to an eligible FFEL lender, to request that any consumer reporting agency to which the default was reported remove the record of the default from the borrower's credit history.

Some of the details related to loan rehabilitation in the FFEL Program regulations are not reflected in the current Direct Loan Program regulations. These include, for example, details such as the specific types of documentation of income and expenses that the Secretary uses to determine a borrower's reasonable and affordable payment amount.

Proposed Regulations: The proposed regulations would incorporate many of the details in current FFEL Program regulations at § 682.405(b) into the Direct Loan regulations at § 685.211(f) and also add new details into both of these sections. Specifically, the proposed regulations would add new §§ 685.211(f)(1)(i) and 682.405(b)(1)(iii) to provide that the Secretary (in the Direct Loan Program) and the guaranty agency (in the FFEL Program) would base the determination of reasonable and affordable rehabilitation payment amounts on information provided by the borrower on a form approved by the Secretary, and, if requested, supporting documentation provided by the borrower.

Proposed §§ 685.211(f)(1)(i)(A) and 682.405(b)(1)(iii)(A) would provide that the Secretary and the guaranty agency will consider the borrower's and, if applicable, the borrower's spouse's current disposable income in determining a reasonable and affordable rehabilitation payment. Disposable income includes public assistance payments and other income received by the borrower and the spouse, such as welfare benefits, Social Security benefits, Supplemental Security Income benefits, and workers' compensation benefits. Under proposed §§ 685.211(f)(1)(i)(A) and 682.405(b)(1)(iii)(A), spousal income would not be considered if the spouse does not contribute to the borrower's household income.

Proposed §§ 685.211(f)(1)(i)(B) and 682.405(b)(1)(iii)(B) would provide that, in determining the reasonable and affordable payment amount, the Secretary and the guaranty agency will consider the borrower's family size, as defined in §§ 685.221(a)(3) and 682.215(a)(3).

Proposed §§ 685.211(f)(1)(i)(C) and 682.405(b)(1)(iii)(C) would provide a more detailed list of the reasonable and necessary expenses that the Secretary and a guaranty agency will consider in determining a borrower's rehabilitation payment amount. The proposed expenses include:

- Food;
- Housing;
- Utilities;
- Basic communication expenses;
- Necessary medical and dental costs;
- Necessary insurance costs;
- Transportation costs;
- Dependent care and other work-related expenses;
- Legally required child and spousal support;
- Other title IV and non-title IV student loan payments; and
- Other expenses approved by the Secretary.

Proposed §§ 685.211(f)(1)(ii) and 682.405(b)(1)(iv) would provide that a reasonable and affordable rehabilitation payment amount must not be a required minimum payment, such as $50, if the Secretary or the guaranty agency determines that a smaller amount is reasonable and affordable. The payment amount also must not be a percentage of the borrower's total loan balance, or be based on other criteria unrelated to the borrower's total financial circumstances.

Under proposed §§ 685.211(f)(1)(iii) and 682.405(b)(1)(v), the Secretary or the guaranty agency would provide the borrower with a written rehabilitation agreement within 15 business days of the determination of the borrower's reasonable and affordable payment amount. The written rehabilitation agreement would include the rehabilitation payment amount, a prominent statement that the borrower may object orally or in writing to the payment amount, and the method and timeframe for raising an objection to the payment amount. The written rehabilitation agreement would provide

an explanation of any other terms and conditions applicable to the required series of payments. The Secretary or the guaranty agency may not impose any other conditions unrelated to the amount or timing of the rehabilitation payments in the rehabilitation agreement. The written rehabilitation agreement would inform the borrower of the effects of having a loan rehabilitated. For FFEL Program loans, the written repayment agreement would inform the borrower of the amount of any unpaid collection costs to be added to the unpaid principal of the loan when the loan is sold to an eligible FFEL lender

Proposed §§ 685.211(f)(3) and 682.405(b)(1)(vi) would provide that the borrower's rehabilitation payment amount would be recalculated if the borrower objects to the payment amount contained in the written repayment agreement that the Secretary or the guaranty agency would send to the borrower under proposed §§ 685.211(f)(4) and 682.405(b)(1)(vi).

Under §§ 685.211(f)(5) and 682.405(b)(1)(vii) a borrower who objects to the monthly repayment amount contained in the written repayment agreement would provide the Secretary or guaranty agency the documentation needed to recalculate a monthly payment amount under the IBR formula. The Secretary or the guaranty agency would recalculate the rehabilitation payment amount using the formula for calculating a monthly payment amount under the IBR plan in § 685.221(b)(1) and (b)(2) of the Direct Loan regulations or § 682.215(b)(1) of the FFEL regulations. If the recalculated amount using the IBR plan formula is less than $5, the borrower's recalculated monthly rehabilitation payment would be $5. If the borrower does not provide the required documentation to the Secretary or the guaranty agency, the Secretary or the guaranty agency would not proceed with the rehabilitation process.

Under proposed § 685.211(f)(7), a Direct Loan borrower may request that the Secretary adjust the borrower's monthly rehabilitation payment if there is a change in the borrower's financial circumstances. The borrower would be required to provide the documentation specified in proposed § 685.211(f)(1)(i) to support the request. This is comparable to the requirement in § 682.405(b)(1) of the current FFEL regulations.

Under proposed §§ 685.211(f)(8) and 682.405(b)(1)(x), while the borrower is making payments under a rehabilitation agreement, the Secretary and the guaranty agency would limit contact with the borrower on the loan being rehabilitated. Contact with the borrower would be restricted to collection activities that are required by law or regulation, and to communications that support the rehabilitation.

After a defaulted Direct Loan has been rehabilitated, proposed § 685.211(f)(9) provides that the Secretary will instruct any consumer reporting agency to which the default was reported to remove the default from the borrower's credit history. This is comparable to the requirement in § 682.405(b)(3)(i)(B) of the current FFEL regulations.

Proposed revisions to §§ 685.211(f) and 682.405(a) relating to the interplay of AWG and loan rehabilitation payments are discussed in the *Loan Rehabilitation Agreement: Treatment of Borrowers Subject to Administrative Wage Garnishment* section of this preamble. *Reasons:* During the public comment period prior to the formal negotiated rulemaking sessions, some commenters recommended that the Secretary consider using the IBR plan formula to determine a borrower's reasonable and affordable payment amount for loan rehabilitation purposes. IBR, which provides for a monthly loan payment that is intended to be affordable based on a borrower's income and family size, became available to borrowers in the Direct Loan and FFEL programs on July 1, 2009. The commenters believed that using the IBR formula would simplify and standardize the process for the determination of loan rehabilitation payments. In addition, the commenters argued that the availability of IBR as a repayment option for borrowers after rehabilitation of a loan provides further support for using the IBR formula to determine a reasonable and affordable payment for loan rehabilitation purposes, since borrowers who have rehabilitated their defaulted loans may request to repay under IBR.

Before the availability of IBR as a repayment option, a borrower who made very low monthly payments under a rehabilitation agreement based on the borrower's income might be faced with a much larger post-rehabilitation monthly payment amount that the borrower could not easily afford, since there were no available repayment plans that would provide for a payment as low as the rehabilitation agreement payment. If a FFEL Program borrower made very low payments during the rehabilitation period, the borrower might not have been able to make the larger, post-rehabilitation payments. Therefore, the guaranty agency might have had difficulty selling the loan to a FFEL lender, or might have been forced to sell the loan at a discount. A FFEL loan is not rehabilitated until the guaranty agency sells it to a lender. The Secretary believes that using the IBR formula to determine what is a reasonable and affordable payment amount for loan rehabilitation purposes would address the issue of borrowers' payment amounts being too high after rehabilitation, since a borrower who paid the IBR amount during the rehabilitation period could choose IBR as his or her repayment plan post-rehabilitation. Therefore, the Secretary agreed to include this proposal on the agenda for negotiated rulemaking.

At the first meeting of the negotiating committee, non-Federal negotiators representing legal aid and consumer advocacy organizations proposed that the IBR formula be used as the starting point for determining a Direct Loan or FFEL borrower's reasonable and affordable rehabilitation payment amount. If the borrower objected to the payment amount determined using the IBR formula and could justify a lower amount, the Secretary or the guaranty agency could reduce the payment below the amount determined under the IBR formula.

Non-Federal negotiators representing guaranty agencies argued that requiring the use of the IBR formula would reduce their ability to work with borrowers to arrive at a rehabilitation payment amount acceptable to both the guaranty agency and to the borrower. They pointed out that it is not in anyone's interest to set a borrower's rehabilitation payment so high that the borrower cannot meet it. They contended that, under their current procedures, negotiations on loan rehabilitation that occur between a borrower and a guaranty agency result in appropriate rehabilitation payment amounts. Those negotiators contended that if the amount initially proposed is too high, the borrower will object and that the negotiations generally result in an amount acceptable to both parties. Using the IBR formula would preclude any such negotiations between the borrower and the guaranty agency. They argued that any change to the regulations with regard to reasonable and affordable rehabilitation payment amounts would amount to fixing a problem that does not exist.

Non-Federal negotiators representing consumer advocacy groups and students disputed this claim. They contended that defaulted borrowers rarely are given an opportunity to negotiate their loan rehabilitation payments and are often intimidated by the debt collectors trying to collect the loan. These negotiators asserted that borrowers are told by debt collectors that they have no choice but to accept the loan rehabilitation

payment amount that is proposed to them, even if the borrower has no practical means of paying that amount.

These non-Federal negotiators also asserted that the statutory requirement that a loan rehabilitation payment amount be ''reasonable and affordable based on the borrower's total financial circumstances'' is routinely ignored by guaranty agencies and the Secretary. The current calculation methods, in their view, are designed to require the borrower to make as high a payment as possible, with no consideration of the borrower's ability to maintain that level of payment throughout the rehabilitation period. These non-Federal negotiators contended that collection agencies working on behalf of guaranty agencies and the Secretary on a commission rate basis have no incentive to help borrowers successfully rehabilitate their loans.

Non-Federal negotiators representing guaranty agencies and collection agencies countered by noting that a collection agency does not earn a commission unless the borrower makes a payment. Setting the payment amount too high is counter-productive to that goal. These negotiators also stated that guaranty agencies do look at a borrower's total financial situation when determining reasonable and affordable payment amounts. They stated that it is routine practice to review a borrower's income and expenses when determining rehabilitation payment amounts.

The negotiators representing guaranty agencies also pointed out that under the IBR formula a $0 payment is possible, and they argued that $0 should not be an acceptable payment amount for purposes of rehabilitating a defaulted loan. They emphasized that loan rehabilitation is a significant benefit. It allows defaulted borrowers to have their credit reports cleared of the default and also allows them to receive additional title IV aid, including new title IV loans. Loan rehabilitation is intended to help the borrower develop a pattern of making monthly, on-time payments on the loan. If a borrower succeeds in making the required number of monthly payments, the borrower is more likely to succeed in continuing to make payments on the loan once the loan goes back into regular repayment. These negotiators pointed out that a borrower may only rehabilitate a loan once. If a borrower rehabilitates a loan, and then re-defaults on the loan, the borrower will not have another opportunity to rehabilitate that loan. These negotiators contended that allowing a borrower to rehabilitate a loan by making monthly payments as low as $0 would not be beneficial to the borrower or to taxpayers.

Non-Federal negotiators representing consumer advocacy groups agreed to address the $0 payment issue by setting a minimum payment amount. However, they argued that the minimum payment should be a very low amount, such as $5, arguing that there is no evidence that borrowers who successfully rehabilitate their loans by making small monthly payments are more likely to re-default than other borrowers or that guaranty agencies have difficulty selling these loans after the borrower has made the required rehabilitation payments. On the contrary, these negotiators asserted that borrowers who make small monthly rehabilitation payments are more likely to get into the habit of making on-time, monthly payments, and to continue making these payments after completing rehabilitation.

Non-Federal negotiators representing guaranty agencies pointed out, however, that, while a low-income borrower might have very small monthly payments under the IBR formula, a borrower with a high income would have higher payments under the IBR formula than under a different approach. Using the IBR formula for calculation of the reasonable and affordable payment amount could result in higher payment amounts than the guaranty agency would propose to a borrower under their current methodologies.

The proposed regulations attempt to address the concerns expressed on both sides of this debate. The proposed regulations would allow the Secretary and the guaranty agencies to retain the flexibility to work with borrowers to determine reasonable and affordable repayment amounts, but would more clearly define the parameters within which the guaranty agencies must work. The Secretary and the guaranty agencies would still be free, under the proposed regulations, to develop their own methodologies for determining the reasonable and affordable payment amount initially proposed to the borrower. However, the Secretary and all of the guaranty agencies would base their determinations of loan rehabilitation payment amounts on the same factors. Specifically, the proposed regulations would require the Secretary and the guaranty agencies to collect information on a borrower's income and expenses using a standardized form. The form would identify the sources of income that the Secretary or the guaranty agency will consider, apply a consistent definition of family size for borrowers, and identify the types of expenses the Secretary or the guaranty agency must take into account in determining the reasonable and affordable payment amount for the borrower.

The Secretary invites comment on whether the final regulations should require the Secretary and the guaranty agencies to use a standardized methodology to determine reasonable and affordable rehabilitation payment amounts. Under a standardized methodology, in addition to identifying the types of expenses that the Secretary or the guaranty agency may consider, we would use standard allowable expense amounts, such as the IRS National Standards, for each type of expense reported by the borrower so that the payment calculation is based on allowable expenses that are consistent across all borrowers. The IRS National Standards are described under the section of this preamble titled ''Borrower Hearing Opportunities on the Enforceability of the Debt and a Borrower's Claim of Financial Hardship.''

Regardless of the methodology used to determine the payment amount, the proposed regulations would establish a process by which borrowers may object to the payment amount proposed by the Secretary or the guaranty agency. The Secretary or the guaranty agency will notify the borrower of the reasonable and affordable payment amount the Secretary or the agency has calculated for the borrower. The notice would include a prominent statement that the borrower may object to the amount proposed. The borrower would be allowed to object, verbally or in writing, to the payment amount that has been determined. If the borrower objects, the Secretary or the guaranty agency would recalculate the amount using the IBR formula. This establishes the IBR formula as a fallback methodology for determining reasonable and affordable payment amounts for loan rehabilitation purposes. Furthermore, the borrower would have the option to reject the amount calculated using the IBR formula and accept the amount initially proposed for any reason, such as if the initially proposed amount is lower than the amount calculated using the IBR formula.

To address the concerns regarding the potential of payments of $0, the proposed regulations specify that if the IBR formula results in a payment of $0, the payment amount would be set at $5. A payment amount this small would apply only to borrowers with extremely low incomes, and would help these borrowers establish the habit of making monthly, on-time payments on the loan.

We believe that this approach preserves flexibility for the Secretary and the guaranty agencies, while at the same time providing a borrower with access to an alternative payment amount if the borrower feels the payment amount proposed by the Secretary or the guaranty agency is too high. The proposed regulations would also ensure that, regardless of which method is used to determine the borrower's rehabilitation payment amount, the amount will be based on the borrower's total financial circumstances without regard to other factors.

Under proposed §§ 685.211(f)(5) and 682.405(b)(1)(vii), if a borrower objects to the initial monthly payment amount, but does not provide the documentation required to calculate a monthly payment amount using the income-based repayment plan formula, the rehabilitation does not proceed. However, the borrower may have already provided some or all of the information required for a recalculation when the borrower initially requested rehabilitation. We invite comments on whether it would be appropriate to make a change in the final regulations to require a borrower to submit information needed to recalculate the borrower's reasonable and affordable rehabilitation payment amount only if new information is required beyond what the borrower provided when he or she initially requested loan rehabilitation.

To ensure consistency in the treatment of Direct Loan and FFEL borrowers, the changes to the regulations discussed above would also be made in the Direct Loan program regulations and the Secretary would follow these same guidelines for defaulted FFEL loans held by the Secretary. We are also proposing to incorporate into the Direct Loan Program regulations the provision in § 682.405(b)(1)(v) of the current FFEL Program regulations that allows a borrower to request that the monthly payment amount be adjusted due to a change in the borrower's total financial circumstances and that specifies the documentation a borrower must provide to support this request.

The proposed regulations would limit contact between the Secretary or a guaranty agency and the borrower during the rehabilitation period. Only those contacts required by law or regulation, or that support the rehabilitation, would be permitted. This addresses a concern raised during the negotiated rulemaking sessions that borrowers who are making good faith efforts to rehabilitate their defaulted Direct Loan or FFEL program loans should not be subject to inappropriate collection contacts while they are making rehabilitation payments.

Loan Rehabilitation Agreement: Treatment of Borrowers Subject to Administrative Wage Garnishment (34 CFR 682.405(a) and 685.211(f))

Statute: Section 428F(a) of the HEA governs rehabilitation of defaulted loans; however, it does not address the treatment of borrowers who are subject to AWG while making voluntary payments under a loan rehabilitation agreement.

Current Regulations: The current Direct Loan and FFEL program regulations do not specifically address payments collected by AWG while a Direct Loan or FFEL borrower is also making voluntary payments under a loan rehabilitation agreement.

Proposed Regulations: The proposed regulations would add new §§ 685.211(f)(12) and 682.405(a)(3) to the Direct Loan and FFEL program regulations to provide that the Secretary or the guaranty agency, respectively, will suspend collection on a defaulted loan through AWG after the borrower makes five qualifying payments under a loan rehabilitation agreement. The suspension of the AWG collection would be automatic after the borrower makes five qualifying payments, but the borrower could request that the Secretary or the guaranty agency continue collecting on the loan through AWG while the borrower also makes voluntary payments under the rehabilitation agreement. The Secretary or the guaranty agency would not suspend AWG unless and until the borrower makes the fifth payment under a loan rehabilitation agreement.

Under proposed new §§ 685.211(f)(12)(ii) and 682.405(a)(3)(ii), the borrower would have only one opportunity to benefit from a suspension of AWG while attempting to rehabilitate a defaulted loan.

Reasons: Loan rehabilitation provides a borrower who has defaulted on a Direct Loan or a FFEL Program loan the opportunity to reaffirm his or her intention to repay the defaulted loan and to establish a repayment history sufficient to support treating the loan as no longer in default. In addition to regaining the benefits that apply to a non-defaulted Direct Loan or FFEL program loan, if a borrower successfully rehabilitates a loan the Secretary or guaranty agency requests that credit bureaus remove the default from the borrower's credit report. Loan rehabilitation payments in the Direct Loan and FFEL programs must be made voluntarily. Payments made through AWG are not voluntary payments.

Currently, for loans held by the Secretary, if a borrower is subject to AWG at the time the borrower enters into a loan rehabilitation agreement, the Secretary will continue to collect on the loan by AWG while the borrower makes the series of voluntary payments necessary to rehabilitate the loan. The voluntary payments the borrower must make are over and above the payments secured through the AWG process.

In response to public comments received on this issue before the negotiated rulemaking sessions, the Secretary initially proposed to relax the requirement that loans continue to be collected through AWG while borrowers who are subject to AWG attempt to rehabilitate a loan. Many of the non-Federal negotiators argued that continuing to collect through AWG while a borrower makes voluntary rehabilitation payments makes it harder for a borrower to complete loan rehabilitation. The negotiations around this issue centered on the following issues: whether there should be a distinction between borrowers already subject to AWG at the time the borrower requests loan rehabilitation and borrowers for whom AWG is about to be initiated; the appropriate number of voluntary payments a borrower should make before AWG is suspended; and how frequently a borrower should be allowed to qualify for this opportunity.

In addition, although the Secretary's initial proposal did not address whether the amount of an AWG payment should affect rehabilitation payments, the negotiators discussed whether the total amount of an involuntary AWG payment and a voluntary rehabilitation payment should be limited to the calculated reasonable and affordable payment amount under the loan rehabilitation agreement.

Under current Department policy, a guaranty agency should not start AWG for a borrower who has requested loan rehabilitation. If the borrower requests the opportunity for rehabilitation, the borrower should be allowed that opportunity before the guaranty agency initiates AWG. If AWG collections started before the borrower requests rehabilitation, guaranty agencies are not required to suspend AWG during the loan rehabilitation process.

Negotiators representing guaranty agencies indicated that the guaranty agencies have different policies with regard to suspending AWG during the rehabilitation period. Some guaranty agencies do not suspend AWG while a borrower is making rehabilitation payments out of a concern that the

borrower will stop making payments as soon as AWG is suspended. Other guaranty agencies suspend AWG after six rehabilitation payments are received from the borrower; and some suspend AWG after three or fewer payments by the borrower.

A non-Federal negotiator representing consumer groups argued that having a single standard for all guaranty agencies would be preferable to having standards that vary from guaranty agency to guaranty agency. Although a uniform standard may increase the number of loan rehabilitation payments some borrowers would be required to make before AWG is suspended, this negotiator contended that, overall, standardizing the number of payments would be more beneficial to borrowers. That negotiator recommended a three-payment standard.

Borrowers are not subject to AWG unless they have been in default on the loan for a lengthy period of time and other collection efforts have been unsuccessful. Given the administrative requirements for initiating AWG, the Secretary does not believe that a standard of three voluntary payments is sufficient as a uniform standard for suspending AWG. The Secretary initially proposed requiring five payments—slightly more than half the number of payments needed to rehabilitate a defaulted Direct Loan or FFEL program loan—before the Secretary or a guaranty agency would suspend AWG.

A non-Federal negotiator representing students proposed that the five-payment requirement be a cap on the number of required payments. Under this proposal, guaranty agencies could suspend AWG after the borrower has made fewer than five loan rehabilitation payments, but would be required to suspend AWG after the fifth payment.

The Secretary believes this approach would contravene one of the goals of the proposal—to standardize the treatment of borrowers who are making loan rehabilitation payments while the loan is also being collected by AWG—and did not accept this proposal. The negotiating committee reached consensus on the Secretary's initial proposal of requiring five AWG payments before the Secretary or a guaranty agency would suspend AWG during a concurrent period of rehabilitation.

Some non-Federal negotiators asked whether borrowers who are subject to AWG by mistake would be required to continue in AWG for five months before AWG could be suspended. The proposed regulations would not affect longstanding guidance from the Secretary that if a borrower is approved for AWG by mistake, the guaranty agency should immediately take steps to terminate AWG. The proposed regulations only apply to suspension of AWG due to payments made under a loan rehabilitation agreement.

Non-Federal negotiators representing guaranty agencies expressed concerns that borrowers who do not intend to actually rehabilitate the loan might use this provision to force guaranty agencies to suspend AWG indefinitely. Although a borrower may only successfully rehabilitate a loan once, there is no limit to the number of times a borrower may attempt to rehabilitate a loan. The guaranty agencies expressed concern that a borrower could interfere with the guaranty agency's ability to collect on a loan through AWG by requesting loan rehabilitation over and over again. These negotiators pointed out that AWG is an effective tool for collecting on student loans, and that the proposed regulations should not provide a loophole for defaulted borrowers to indefinitely forestall AWG.

To address the concern raised by these negotiators, the proposed regulations specify that a borrower may only receive this benefit once. If a borrower subject to AWG makes five qualifying payments on a loan under a rehabilitation agreement, AWG will be suspended. If the borrower fails to make qualifying loan rehabilitation payments, the Secretary or the guaranty agency may take the steps necessary to reinstate AWG. If the borrower attempts to rehabilitate the loan again, AWG would remain in place during the entire loan rehabilitation period.

A non-Federal negotiator asked whether a guaranty agency would be required to go through the AWG hearing and notice requirements if it resumes AWG. Since AWG would be suspended but not withdrawn, the formal hearing requirements would not apply. However, consistent with requirements to provide other notices to the borrower throughout the AWG process, the guaranty agency would be expected to notify the borrower of the resumption of AWG.

Although the proposal only addresses the suspension of AWG during a period in which the borrower is making payments under a loan rehabilitation agreement, some non-Federal negotiators asked about the relationship between the amount of money collected involuntarily from the borrower through AWG and the voluntary payments the borrower makes under a loan rehabilitation agreement. As discussed earlier in the *Loan Rehabilitation Agreement: Reasonable and Affordable Payment Standard* section of this preamble, a loan rehabilitation payment amount must be reasonable and affordable. Non-Federal negotiators representing consumer groups and students recommended that the regulations require that the Secretary or the guaranty agency adjust the amounts collected under AWG and the loan rehabilitation agreement, so that the two payments would combine to equal the reasonable and affordable payment amount agreed to by the guaranty agency and the borrower in the rehabilitation agreement.

Under the HEA, a rehabilitation payment must not only be reasonable and affordable, but it must also be made voluntarily. AWG payments are not voluntary, and are not part of a borrower's loan rehabilitation payment.

Non-Federal negotiators representing guaranty agencies stated that some guaranty agencies currently do reduce AWG payments for borrowers who are rehabilitating their loans. These negotiators indicated that guaranty agencies would likely continue this practice under the proposed regulations, but, to preserve flexibility for guaranty agencies, they did not support requiring this practice in the regulations. The Department agreed with these negotiators that, since the guaranty agencies work with many different types of borrowers, it would be preferable to continue to allow the guaranty agencies flexibility in making these determinations. Therefore, proposed §§ 685.211(f) and 682.405(a) do not require the Secretary or the guaranty agencies to reduce AWG payments to reflect the amount of payments made by the borrower under a loan rehabilitation agreement, nor do they prevent the Secretary or a guaranty agency from making such reductions at their discretion.

Some non-Federal negotiators suggested that some borrowers may prefer to continue AWG payments while they are also making loan rehabilitation payments. These borrowers might view the AWG payments as similar to automatic debit payments that would pay down their loans faster than rehabilitation payments alone. These negotiators recommended that the proposed regulations allow these borrowers to request that AWG continue while they make rehabilitation payments. The Secretary agreed with this suggestion.

Perkins Loan Program Issues

Federal Perkins Loan Graduate Fellowship Deferment Eligibility (34 CFR 674.34(b)(1) and (f))

Statute: Section 464(c)(2)(A)(i)(II) of the HEA authorizes a deferment for a Perkins Loan borrower while the borrower is pursuing a course of study pursuant to a graduate fellowship program approved by the Secretary, except that a borrower is not eligible for a deferment while serving in a medical internship or residency program. HEA section 464(c)(2)(A)(i)(II) does not specify the requirements that a Perkins Loan borrower must meet to be eligible for the graduate fellowship deferment.

Current Regulations: The Perkins Loan Program regulations in § 674.34(b)(1)(ii) provide that a Perkins Loan borrower is eligible for a graduate fellowship deferment when the borrower is enrolled and in attendance as a regular student in a course of study that is part of a graduate fellowship program approved by the Secretary. To qualify for the deferment, § 674.34(f) requires a borrower to provide certification to the institution that the borrower has been accepted or is engaged in full-time study in the institution's graduate fellowship program.

Proposed Regulations: The proposed regulations in § 674.34(f)(1) would require schools that participate in the Perkins Loan Program to use the same eligibility criteria that lenders use in the FFEL Program (under § 682.210(d)) to define an eligible graduate fellowship program and to establish the eligibility of a Perkins Loan borrower for a graduate fellowship deferment. Proposed § 674.34(f)(2) would define an ''eligible graduate fellowship program'' as a program that:

- Provides sufficient financial support to allow for full-time study for at least six months;
- Requires a written statement from each applicant explaining the applicant's objectives before the award of that financial support;
- Requires a graduate fellow to submit periodic reports, projects, or evidence of the fellow's progress; and
- In the case of a course of study at a foreign university, accepts the course of study for completion of the fellowship program.

Proposed § 674.34(f)(1) would also require a statement signed by an official of the program certifying:

- That the borrower holds at least a baccalaureate degree conferred by an institution of higher education;
- That the borrower has been accepted or recommended by an institution of higher education for acceptance on a full-time basis into an eligible graduate fellowship program; and
- The borrower's anticipated completion date in the program.

Reasons: We are proposing changes to § 674.34(f)(1) of the Perkins Loan Program regulations to mirror the definition of an ''eligible graduate fellowship program'' and the graduate fellowship deferment eligibility criteria that are used in the FFEL and Direct Loan programs. These changes would provide consistent treatment of borrowers across the HEA, title IV loan programs.

Federal Perkins Loan Economic Hardship Deferment Debt-to-Income Ratio Provision (34 CFR 674.34(e)(4))

Statute: Section 304 of the College Cost Reduction and Access Act (CCRAA), Public Law 110–84, amended the definition of ''economic hardship'' in section 435(o) of the HEA by eliminating section 435(o)(1)(B). That section defined the term ''economic hardship'' to include a borrower who is working full-time and has a Federal educational debt burden that equals or exceeds 20 percent of the borrower's adjusted gross income (AGI), if the difference between the borrower's AGI and the borrower's Federal debt burden is less than 220 percent of either the annual minimum wage or the poverty line.

Current Regulations: Under § 674.34(e)(4), a Perkins Loan borrower may receive an economic hardship deferment if he or she is not receiving total monthly gross income that exceeds twice the amount specified in § 674.34(e)(3) and, after deducting an amount equal to the borrower's payments on Federal postsecondary education loans, the remaining amount of the borrower's income does not exceed the amount specified in § 674.34(e)(3). The amount specified in § 674.34(e)(3) is the greater of the monthly earnings of an individual earning the minimum wage rate, or an amount equal to 150 percent of the poverty guideline for the borrower's family size.

Proposed Regulations: The proposed regulations would remove the debt-to-income economic hardship deferment category in § 674.34(e)(4) and related provisions in § 674.34(e)(6) and (e)(9) from the Perkins Loan Program regulations.

Reasons: Final regulations published by the Department on October 23, 2008, (73 FR 63232) eliminated from the Perkins, Direct Loan, and FFEL regulations the debt-to-income economic hardship deferment that was based on former section 435(o)(1)(B) of the HEA. The final regulations also eliminated a similar debt-to-income economic hardship deferment category for a borrower who is working less than full-time from the Direct Loan and FFEL regulations, but inadvertently retained the comparable category in § 674.34(e)(4) of the Perkins Loan Program regulations, thus creating a disparity between the economic hardship deferment eligibility criteria in the Perkins program and the eligibility criteria in the Direct Loan and FFEL programs. We are proposing to eliminate § 674.34(e)(4) and related provisions in § 674.34(e)(6) and (e)(9) to reflect the statutory change made to the definition of ''economic hardship'' in HEA section 435(o) and to make the Perkins Loan Program regulations consistent with the comparable FFEL and Direct Loan program regulations.

Federal Perkins Loan Standard for On-Time Loan Rehabilitation Payment (34 CFR 674.39(a)(2))

Statute: In accordance with section 464(h)(1)(A) of the HEA, a defaulted Perkins loan is successfully rehabilitated if a borrower makes nine on-time, consecutive, monthly payments of amounts owed on the loan, as determined by the institution, or by the Secretary. The term ''on-time'' is not defined.

Current Regulations: Under § 674.39(a)(2), a defaulted Perkins Loan is rehabilitated if the borrower makes an on-time, monthly payment, as determined by the institution, each month for nine consecutive months and the borrower requests rehabilitation. The term ''on-time'' is not defined. In § 682.405(a)(2)(A)(3) of the FFEL Program regulations and § 685.211(f)(1) of the Direct Loan Program regulations, a payment made within 20 days of the due date is considered ''on-time'' for the purposes of rehabilitating a defaulted loan.

Proposed Regulations: The proposed regulations would modify § 674.39(a)(2) by requiring a borrower to make a full, monthly payment, as determined by the institution, within 20 days of the due date, each month, for nine consecutive months.

Reasons: The issue of establishing a standard for an on-time payment for the purposes of rehabilitating a defaulted Perkins Loan was added to the negotiating agenda at the suggestion of a non-Federal negotiator. The non-Federal negotiator believed that a similar standard for determining ''on-time'' in the Perkins Loan, FFEL, and Direct Loan programs would help

borrowers with more than one type of title IV loan to successfully rehabilitate the loan and would provide consistency across the HEA, title IV loan programs in the treatment of borrowers who are rehabilitating a defaulted loan. The Department agreed.

Social Security Number Requirement (SSN) for Assignment of Defaulted Federal Perkins Loans to the United States (34 CFR 674.50(e)(1))

Statute: The HEA does not include any specific rules for the process for assigning defaulted Perkins Loans.

Current Regulations: The current regulations in § 674.50(e)(1) provide that the Secretary does not accept assignment of a loan if the institution has not provided the SSN of the borrower, unless the loan is submitted for assignment under § 674.8(d)(3). (§ 674.8(d)(3) refers to the Secretary's authority to mandate assignment of certain defaulted Perkins Loans. This authority was eliminated by the Higher Education Opportunity Act of 2008, Public Law 110–315 (HEOA)).

Proposed Regulations: The proposed regulations in § 674.50(e)(1) would allow assignment of a Perkins Loan without the borrower's SSN if the loan was made before September 13, 1982, which was the date the Department began requiring institutions to collect the borrower's SSN on the Perkins Loan Program promissory notes.

Reasons: The Department believes that it is unfair to require an institution to provide the borrower's SSN when assigning a Perkins Loan if the institution was not required to collect the SSN at the time the loan was made. The proposed regulations would give the institution the option of assigning such a loan to the Department, rather than holding on to a defaulted loan that the institution has little chance of collecting.

Federal Perkins Loan Break in Cancellation Service Due to a Condition Covered Under the Family and Medical Leave Act (34 CFR 674.52(b)(2))

Statute: Section 465(a)(3)(A) of the HEA provides that a specified percentage of principal and interest on a Perkins Loan can be cancelled for each ''year'' during which the borrower is employed in certain specified positions. Section 465(a)(4) provides that the term ''year'' where applied to employment as a teacher means the academic year as defined by the Secretary. The HEA does not provide for a break in qualified service for cancellation purposes.

Current Regulations: Current regulations in § 674.52(b)(2) allow a borrower who is performing qualified teaching service, but who is unable to complete the academic year due to illness or pregnancy, to still qualify for cancellation of the principal and interest on his or her Perkins Loan if the borrower completes the first half of the academic year, and has begun teaching the second half, and the borrower's employer considers the borrower to have fulfilled his or her contract for the academic year for purposes of salary increment, tenure, and retirement. The regulations in § 674.52(b)(2) address only qualified teaching service, not other types of employment which may qualify the borrower for loan cancellation, such as nursing or law enforcement.

In the FFEL and Direct Loan programs, under §§ 682.216(c)(7)(ii) and 685.217(c)(7)(ii), respectively, if the borrower is unable to complete the second half of an academic year of teaching due to a condition covered under the FMLA, the teaching service for loan cancellation purposes in those programs may still count as a year of eligible teaching service if the borrower's employer considers the borrower to have fulfilled the teacher contract requirements for that academic year. Conditions covered under the FMLA include:

- The birth of a child and to care for the newborn child within one year of birth;
- The placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement;
- To care for the employee's spouse, child, or parent who has a serious health condition;
- A serious health condition that makes the employee unable to perform the essential functions of his or her job;
- Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on ''covered active duty;'' and
- To care for a covered service member with a serious injury or illness who is the spouse, son daughter, parent, or next of kin to the employee (military caregiver leave). (29 U.S.C. 2601 et seq.)

Proposed Regulations: The proposed regulations in § 674.52(c)(1) would allow a Perkins Loan borrower who is unable to complete the second half of an academic year of teaching due to a condition covered under the FMLA to still count that year as eligible teaching service if the borrower's employer considers the borrower to have fulfilled the teacher contract requirements for that academic year. In addition, the proposed regulations in § 674.52(c)(2) would allow a Perkins Loan borrower who is unable to complete a full year of eligible public service under §§ 674.56, 674.57, 674.59, or 674.60 due to a condition that is covered under the FMLA to count that year as a full year of public service if the borrower completes at least six months of consecutive eligible service.

Reasons: By allowing a Perkins Loan borrower to count a year of teaching service that is interrupted by a condition covered under the FMLA, the proposed regulations would provide for more consistent treatment of similarly situated borrowers who are performing teaching service that may qualify them for FFEL or Direct Loan teacher loan forgiveness. By allowing a Perkins Loan borrower to count a year of service that has been interrupted by a condition covered under the FMLA for the public service loan cancellations under §§ 674.56, 674.57, 674.59, or 674.60, the proposed regulations would provide for consistent treatment of all Perkins Loan borrowers who are seeking cancellation benefits on their Perkins Loans, not just those borrowers seeking a cancellation based on employment as a teacher.

Federal Perkins Loan Cancellation Rate Progression (34 CFR 674.52(g), 674.53(d), 674.56(h), 674.57(c)(2), 674.59(c)(2) and 674.60(b))

Statute: Under section 465(a)(3)(A)(i) of the HEA, the percent of original principal on a Perkins Loan that is canceled for each year of employment by a Perkins Loan borrower in certain qualified public service jobs is 15 percent for the first and second year of service, 20 percent for the third and fourth year of service, and 30 percent for the fifth and final year of service. The interest on the unpaid balance of the loan that accrues during any year of qualifying service is also canceled. Qualified public service under section 465(a)(2) of the HEA includes, among other things, teaching, military service in an area of hostility, law enforcement, nursing, and firefighting. There are two types of public service that have a different cancellation rate progression. Under section 465(a)(3)(A)(ii), the cancellation rate for each year of qualified service in certain early childhood education programs is 15 percent of the original loan principal plus the interest on the unpaid balance accruing during the year of qualifying service. Under section 465(a)(3)(A)(iii), the cancellation rate for each year of a borrower's qualified service as a volunteer under the Peace Corps Act or a volunteer under the Domestic Volunteer Service Act of 1973 is 15 percent of the original loan principal for the first or second year of qualified

service and 20 percent of the original loan principal for the third or fourth year of qualified service. The interest on the unpaid balance that accrues during any year of qualifying service is also canceled.

Current Regulations: The cancellation progression rate for qualified public service performed by a Perkins Loan borrower under §§ 674.53(d) (teachers), 674.56(a) (nurse or medical technician), 674.57(c)(2) (law enforcement or corrections officer), and 674.59(c)(2) (military service), is 15 percent of the original principal for the first and second year of service, 20 percent for the third and fourth year of service, and 30 percent for the fifth and final year of service, consistent with section 465(a)(3)(A)(i) of the HEA. The interest on the unpaid balance that accrues during any year of qualifying service is also canceled. The cancellation progression rate for each year of qualified service in an early childhood education program performed by a Perkins Loan borrower under § 674.58 is 15 percent of the original principal plus interest that accrues during the year of qualifying service on a Perkins Loan, which mirrors section 465(a)(3)(A)(ii) of the HEA. Lastly, the cancellation progression rate for each year of qualified service as a volunteer under the Peace Corps Act or a volunteer under § 674.60 is 15 percent of the original principal for the first or second year of qualified service and 20 percent for the third or fourth year of qualified service, plus any interest that accrued during the year of qualifying service, which mirrors section 465(a)(3)(A)(iii) of the HEA.

Proposed Regulations: The proposed regulations would not change the current cancellation progression rate under the cancellation categories in §§ 674.53, 674.56, 674.57, or 674.59. The percentage of original principal canceled would remain the same, and any interest on the unpaid balance that accrues during any year of qualifying service would continue to be canceled. However, under proposed § 674.52(g)(1), if, after the first, second, third, or fourth complete year of qualifying service the borrower switches to a position that qualifies the borrower for cancellation under a different cancellation category under §§ 674.53, 674.56, 674.57, or 674.59, the borrower's cancellation rate progression continues from the last year the borrower received a cancellation under the former cancellation category. Under proposed § 674.52(g)(2), if, after the first, second, third, or fourth complete year of qualifying service under §§ 674.53, 674.56, 674.57, or 674.59 the borrower switches to a position that qualifies the borrower for cancellation under § 674.58 or 674.60, the borrower's cancellation rate progression begins at the year one cancellation rates specified in §§ 674.58(b) or 674.60(b), respectively.

Reasons: We believe that requiring a borrower to restart a cancellation progression is unnecessary. In each of these situations, the borrower is performing a valuable public service which qualifies for loan cancellation. Since the cancellation rates in these categories are identical, we believe it is more equitable to allow borrowers to continue their progression toward full loan cancellation when they change jobs to a position with the same cancellation progression.

We are not proposing to allow borrowers who switch to or from the cancellation categories in §§ 674.58 or 674.60 to continue under the same cancellation rate progression because the cancellation rates under these two provisions are not comparable to the cancellation rates in §§ 674.53, 674.56, 674.57, or 674.59. Under § 674.58(b), a borrower receives cancellation at the rate of 15 percent for each year of eligible service. Under § 674.60(a), a borrower may only receive cancellation of up to 70 percent of the original principal.

FFEL Program Issues

FFEL Lender Repayment Disclosures for Borrowers Who Are 60 Days Delinquent (34 CFR 682.205(c))

Statute: Section 433(e)(3) of the HEA requires FFEL Program lenders to provide a borrower who is 60 days delinquent in making payments on a FFEL Program loan a notice that informs the borrower of: (1) The date on which the loan will default if no payment is made; (2) the minimum payment the borrower must make to avoid default; (3) a description of the options available to the borrower to avoid default and the relevant fees or costs associated with each option; (4) a description of deferment and forbearance options and the requirements to obtain each; (5) any discharge options the borrower may be entitled to; and (6) any additional resources of which the lender is aware that can provide the borrower with advice and assistance on student loan repayment, including nonprofit organizations, advocates, counselors, and the Department's Student Loan Ombudsman.

Current Regulations: Section 682.205(c)(5)(ii) of the Department's regulations requires FFEL lenders to provide a repayment disclosure to a borrower, including all of the information listed in section 433(e)(3) of the HEA, within five days of the borrower becoming 60 days delinquent on the FFEL loan. The Department interprets five days for this purpose as five calendar days, rather than business days. The regulations also specify that the minimum payment necessary to avoid default disclosed to the borrower must be the amount as of the disclosure date. The lender must also include the amount necessary to bring the loan current or pay the loan in full.

Proposed Regulations: The proposed regulations would redesignate current § 682.205(c) as § 682.205(a). Redesignated § 682.205(a)(5)(ii) would change the timeframe for FFEL lenders to send the required disclosure from five calendar days after the date the borrower becomes 60 days delinquent to five business days after that date.

Reasons: The non-Federal negotiators representing lenders and lender servicers indicated that the required disclosure is often system-generated and sent out automatically on a fixed schedule. These negotiators stated that office closures and delays due to necessary system maintenance and upgrades may result in a technical violation of the regulations if the lender is unable to send the required notice to the borrower within the five calendar days provided under current regulations. The Department and the other non-Federal negotiators agreed that unintended noncompliance with the regulatory deadline could result under these circumstances and that the regulations were not intended to penalize the lender for this type of possible delay. Accordingly, the proposed regulations would provide the lender with five business days to generate the required disclosure.

FFEL Lender Repayment Disclosures to Borrowers Who Are Having Difficulty Making Payments (34 CFR 682.205(c))

Statute: Section 433(e)(2) of the HEA requires FFEL Program lenders to provide certain information to assist borrowers who notify the lender that they are having difficulty making payments on their loans. The lender must provide the borrower with information about: (1) The repayment plans available to the borrower and how the borrower may request a change in repayment plan; (2) the requirements for obtaining a forbearance on a loan and any expected costs associated with forbearance; and (3) the options available to the borrower to avoid default and any relevant fees or costs associated with those options.

Current Regulations: Section 682.205(c)(4) of the Department's

regulations requires a lender to provide a borrower who is having difficulty making required payments on a loan a disclosure that contains the information specified in section 433(e)(2) of the HEA. The lender must send the disclosure each time the borrower contacts the lender and tells the lender that he or she is having difficulty making payments on the loan.

Proposed Regulations: The proposed regulations would amend 34 CFR 682.205(c)(4) to no longer require a lender to provide the disclosure required by that section if the borrower's difficulty has been resolved through contact resulting from an earlier disclosure or from other contact between the lender and the borrower.

Reasons: The non-Federal negotiators representing FFEL lenders and lender servicers noted that providing the required disclosure in response to every borrower contact may confuse the borrower if prior contact between the borrower and the lender or servicer has addressed the borrower's repayment problem. The negotiating committee agreed that the disclosure should not be automatically triggered under these circumstances because the repeated disclosure could confuse the borrower and be counterproductive to keeping the borrower in active, timely repayment or in another acceptable repayment status.

Administrative Wage Garnishment of the Disposable Pay of Defaulted FFEL Program Borrowers (34 CFR 682.410(b)) Borrower Hearing Opportunities on the Enforceability of the Debt and a Borrower's Claim of Financial Hardship (34 CFR 682.410(b)(9)(i))

Statute: Section 488A(a)(3) of the HEA provides borrowers who have defaulted on a title IV loan and who are subject to AWG the opportunity to inspect and copy records relating to the debt. Section 488A(a)(5) of the HEA provides that these borrowers must be provided the opportunity for a hearing concerning the existence or amount of the debt. Section 488A(b) of the HEA establishes certain requirements for the hearing opportunity required under subsection (a)(5).

Current Regulations: Section 682.410(b)(9)(i)(E) of the Department's regulations reflects the statutory requirement that the borrower be provided the opportunity for a hearing concerning the existence or amount of the debt. Section 682.410(b)(9)(i)(J) provides that the borrower has the choice of having an oral or written hearing. However, the current regulations do not include further details on how the hearing should be conducted, the method by which the borrower may raise objections to the AWG or how the hearing official should make decisions during the hearing. The current regulations do not address a borrower's objections to the enforceability of the debt or a claim of financial hardship.

Proposed Regulations: The proposed regulations would amend § 682.410(b)(9)(i)(E) of the Department's regulations to require that a guaranty agency offer a borrower the opportunity to contest the enforceability of the debt in addition to the existence or amount of the debt. The proposed regulations would also require the guaranty agency to provide the borrower with the opportunity to raise an objection that withholding from the borrower's disposable pay—in the amount or at the rate proposed in the notice advising the borrower of the planned garnishment—would cause financial hardship to the borrower.

The proposed regulations would also amend § 682.410(b)(9)(i)(F) to clearly address the burden of proof that applies with regard to objections by the borrower to garnishment, and to describe the procedures that must be followed by the borrower and guaranty agency when the borrower raises the objections described in paragraph § 682.410(b)(9)(i)(E). Under proposed § 682.410(b)(9)(i)(F)(*1*)(*i*), as part of the oral or written hearing, the guaranty agency would have to provide evidence of the existence of the debt. Once the agency provides that evidence, the burden of proof would shift to the borrower to establish, by a preponderance of the evidence that: No debt exists; the amount of the debt the agency claims is incorrect, including that any amount of collection costs assessed to the borrower exceeds the regulatory limits; the debt is not enforceable under applicable law; or the debt is not delinquent. If the borrower objects to the amount of the collection costs charged by the agency included in the debt, the borrower must prove that collection costs charged on the defaulted loan exceed the amount a guaranty agency is permitted to assess a borrower under § 682.410(b)(2) of the Department's regulations.

Under proposed § 682.410(b)(9)(i)(F)(*1*)(*ii*), the borrower would be able to raise any of these objections at any time before the hearing official closes the record and notifies the parties that no additional evidence or objections will be accepted.

If the borrower claims that the withholding amount or rate that the agency proposed in its notice would cause financial hardship to the borrower and the borrower's spouse and dependents, the borrower bears the burden of proving the claim of financial hardship by a preponderance of the evidence. Under § 682.410(b)(9)(i)(F)(*2*)(*ii*), in determining whether the withholding amount would cause a financial hardship for the borrower, the hearing official would compare the borrower's living expenses against the amount spent for basic living expenses by families of the same size and similar income to the borrower's, as reflected in the IRS National Standards. The term ''National Standards'' is more precisely used by the IRS to refer to a subset of living expenses that includes five necessary expenses: food, housekeeping supplies, apparel and services, personal care products and services, and miscellaneous. In addition, the IRS has established standards for: Out-of-pocket health care expenses, which include medical services, prescription drugs, and medical supplies (e.g. eyeglasses, contact lenses, etc.); transportation standards for taxpayers with a vehicle; and housing and utilities standards, which include mortgage or rent, property taxes, interest, insurance, maintenance, repairs, gas, electric, water, heating oil, garbage collection, residential telephone service, cell phone service, cable television, and internet service. The IRS refers to these standards collectively as the ''Collection Financial Standards.'' The proposed regulations refer to all these standards collectively as the ''National Standards.'' For more information on the IRS National Standards refer to *www.irs.gov/Individuals/Collection-Financial-Standards*. We invite comment on whether the term should be changed to conform to the term used by the IRS, which developed the standards.

Under proposed § 682.410(b)(9)(i)(F)(*2*)(*iv*), if the hearing official upholds the borrower's objection to the amount or rate of withholding in part, then the garnishment may be ordered at a lesser rate or amount that would allow the borrower to meet basic living expenses. If the garnishment order is already in effect when the hearing official makes a decision, the guaranty agency must notify the borrower's employer of any change in the amount to be withheld or the rate of withholding.

The Department notes that the consensus language of § 682.410(b)(9)(i)(F)(*2*)(*iv*) of the proposed regulations differs from regulations governing wage garnishment of Department-held loans at 34 CFR part 34. The proposed regulations state that a withholding order ''may be ordered at a lesser rate or amount'' by a guaranty

agency if a hearing official upholds, in part, a borrower's claim of financial hardship. The Department believes that the proposed language could be interpreted as providing a guaranty agency discretion in adjusting a borrower's payment and rate based on a hearing official's finding, rendering the hearing official's ruling moot and potentially resulting in inconsistent treatment of similarly situated borrowers. The Department considers the hearing official's determinations whether garnishment would cause hardship, and whether garnishment can be ordered only at a lesser rate than proposed by the guaranty agency, to be binding on the agency, and not a matter left to the discretion of the agency. The Department particularly invites comments on whether the agreed-upon language—using ''may'' in this context rather than ''must''—is contrary to the intent of providing the borrower an opportunity for an independent determination on a financial hardship objection.

Proposed § 682.410(b)(9)(i)(F)(*2*)(v) would also require that a determination of financial hardship be effective for no longer than six months, and that if, after that period, the guaranty agency determines that the amount or rate of withholding should be increased, the guaranty agency must notify the borrower of the increase and provide the borrower with an opportunity to contest the determination and obtain a hearing on the objection.

The proposed regulations would also add a new § 682.410(b)(9)(i)(N) to the regulations to specify the process by which a borrower may raise an objection to the amount or rate of a withholding order on grounds of financial hardship. The proposed regulations would allow the borrower to raise an objection at any time, but would not require the guaranty agency to consider the objection until at least six months after the date the order was issued. Under the proposed regulations the guaranty agency may provide a hearing earlier than six months after the date the order was issued under extraordinary circumstances—that is, if the borrower's request for review shows that the borrower's financial circumstances have substantially changed after the garnishment notice because of an event such as an injury, divorce, or a catastrophic illness.

The Department is also proposing to reorganize current provisions in § 682.410(b)(9) to more logically reflect the AWG process, from the initial garnishment notice, to the hearing process, to the withholding of wages. The following sections summarize the discussion and proposed changes to § 682.410(b)(9).

Reasons: The Department did not include the regulations governing AWG for defaulted FFEL Program borrowers on the original list of regulations to be addressed by the negotiated rulemaking process. However, a non-Federal negotiator asked that the topic be added to the agenda and that § 682.410(b)(9) of the regulations be amended to make certain provisions consistent with the requirements in 34 CFR part 34 that govern AWG for loans held by the Department.

Specifically, the negotiator requested that the regulations be amended to specifically reflect a borrower's right to request a hearing on the enforceability of the debt and to allow the borrower to object to the amount or rate of AWG withholding on the basis that such withholding would cause financial hardship to the borrower.

As negotiations proceeded, other non-Federal negotiators requested that additional changes be made to the regulations to provide more detail on the guaranty agency's administration of the AWG notification and hearing process.

The Department agreed to revise the FFEL Program regulations to provide more consistent treatment for both borrowers whose defaulted loans are held by a guaranty agency and those with loans held by the Secretary. In addition, the Department is proposing to amend certain regulatory provisions to incorporate existing policy guidance and, at the request of the non-Federal negotiators, to provide examples of permissible activities associated with certain phases of AWG.

To respond to a request from a non-Federal negotiator that borrowers be allowed to object at any time to the amount or rate of withholding on the basis of financial hardship, the negotiators agreed to propose new § 682.410(b)(9)(i)(N). This proposed paragraph was added to balance the ability of borrowers to raise a financial hardship objection at any time against the practical necessity of limiting the number of hearings to a reasonable number. Accordingly, the proposed regulations limit such a hearing opportunity to once every six months absent extraordinary circumstances that have substantially changed the borrower's financial circumstances.

Use of Third-Party Contractors in AWG Hearings (34 CFR 682.410(b)(9))

Statute: Section 436(a) of the HEA provides that a FFEL Program lender or guaranty agency that delegates its functions to another entity is not relieved of its duty to comply with the HEA and must monitor the other entity's activities to ensure compliance with the requirements of the HEA. Section 488A(b) of the HEA prohibits the use of a hearing official who is under the supervision or control of the guaranty agency, but does not otherwise prevent a guaranty agency from retaining a third-party agent to perform AWG-related administrative functions for the agency.

Current Regulations: Section 682.203(a) of the FFEL Program regulations reflects section 436(a) of the HEA and acknowledges that a guaranty agency may contract or otherwise delegate the performance of its functions to a servicing agency or other party. Such a delegation does not relieve the guaranty agency of its duty to ensure that the other party's actions comply with the requirements imposed on the guarantor by the HEA. Section 682.410(b)(9) of the regulations governing a guaranty agency's administration of the AWG process does not address the use of third-party contractors within the AWG context.

Proposed Regulations: The proposed regulations would add new § 682.410(b)(9)(i)(I) to specify that the wage garnishment hearing official may not be under the control of a third-party servicer or collection contractor employed by the guaranty agency. Paragraph (b)(9)(i)(I) would also clarify that payment of compensation to the hearing official for hearing services does not constitute impermissible control by the guaranty agency, a third-party servicer, or a collection contractor employed by the agency. The proposed regulations would also provide that all of the hearing official's oral communications must be made with both the guaranty agency (or its representative) and the borrower present, and that all of the hearing official's written communications with one party must be promptly shared with the other party, with the exception of those communications necessary to plan the time, place, and manner of the hearing.

The proposed regulations would also add a new § 682.410(b)(9)(i)(T) to specify the functions that may be performed by a third-party servicer or collection contractor employed by the guaranty agency for AWG purposes, such as obtaining employment information for the purposes of garnishment, negotiating alternative repayment arrangements with borrowers, and responding to inquiries from borrowers. The proposed regulations would make it clear that the guaranty agency may not delegate to a

third party the decision to order withholding of an individual borrower's wages, and that the agency must create and retain records to demonstrate that each AWG order has been individually authorized by an appropriate official of the guaranty agency. The proposed regulations would also specify the manner by which a withholding order may be sent to employers.

Reasons: In an effort to ensure that AWG hearings are impartial, the Department is proposing new paragraph (b)(9)(i)(I) to clarify that an AWG hearing official may not be under the supervision or control of the guaranty agency or of a third-party servicer or contractor employed by the agency. A non-Federal negotiator requested that language be added to the regulations to provide that the normal payment of compensation to the hearing official for performance of his or her duties would not constitute such impermissible control. To further ensure a fair hearing, the Department also added language to prohibit the hearing official from engaging in ex parte communications without notice to the other party, except in regard to the logistical details of the hearing.

Section 488A of the HEA gives the Secretary and guaranty agencies authority to issue a garnishment order. In the case of a guaranty agency, only a guaranty agency official, and not a contractor for the agency, can lawfully issue an order for the withholding of a borrower's wages. New paragraph (b)(9)(i)(T) reflects that restriction, and includes a non-exhaustive list of activities that may be performed by a third-party servicer or collection contractor employed by the guaranty agency. The proposed regulations reflect the Department's earlier guidance to the guaranty agencies on the limitations on the use of collection contractors or other third-party servicers to conduct administrative activities for a guaranty agency related to the wage garnishment process. The Department believes that some guaranty agencies may not be aware of the guidance or are no longer monitoring their servicers for compliance with that guidance. The Department therefore determined that this guidance should be incorporated into the proposed regulations. Most significantly, a third-party contractor may not make the determination that a withholding order is to be issued, and the order must clearly identify the guaranty agency as the holder of the debt. The order cannot expressly state or imply that the third-party agent is the holder of the loan or that the third-party agent has authority to initiate a withholding order.

A non-Federal negotiator also requested that the proposed regulations include a list of examples of the permissible activities that third-party contractors may perform in the AWG process. New paragraph (b)(9)(i)(T)(*1*) lists examples of such activities, which are limited to administrative tasks, such as obtaining employment information, receiving garnishment payments, and providing information to borrowers.

Amount or Rate of Wage Withholding (34 CFR 682.410(b)(9))

Statute: Section 488A(a)(1) of the HEA limits the amount of the borrower's pay that may be subject to garnishment to 15 percent of the borrower's disposable pay for any pay period. Section 1673 of Title 15 of the U.S. Code limits the amount of disposable pay that may be subject to garnishment to the lesser of 25 percent of the borrower's disposable pay for any pay period (in cases where multiple withholding orders exist) or the amount by which the borrower's disposable pay for any pay period exceeds 30 times the minimum wage.

Current Regulations: Current § 682.410(b)(9)(i)(A) describes the statutory limits to garnishment as an amount that does not exceed the lesser of 15 percent of the borrower's disposable pay for each pay period or the amount permitted by 15 U.S.C. 1673, unless the borrower provides the agency with written consent to deduct a greater amount. The current regulations do not describe the limitations in detail, including the limitation on the amount of garnishment in cases where there is a single withholding order compared to when multiple orders exist.

Proposed Regulations: The proposed regulations would add a new § 682.410(b)(9)(i)(K) to the Department's regulations. The proposed regulation would limit the withholding amount or percentage if a guaranty agency is garnishing pay from a borrower who is not already subject to a withholding order. Unless the individual consents to a greater percentage or amount, the guaranty agency would be required to garnish the smallest of: (1) The amount specified in the withholding order; (2) 15 percent of the borrower's pay for the pay period; or (3) the amount by which the borrower's disposable pay for the pay period exceeds 30 times the minimum wage.

The proposed regulations would also add a new § 682.410(b)(9)(i)(L) to the regulations to clarify the withholding amount or percentage and priority if a guaranty agency is garnishing the pay of a borrower who is already subject to one or more withholding orders. Unless another Federal law dictates a different priority, the borrower's employer would be required to honor the guaranty agency's withholding order before any later-received withholding orders, except a family support withholding order. The proposed regulations clarify that the cumulative allowable amount to be withheld under the sum of all withholding orders is limited to 25 percent of the borrower's disposable pay for the pay period or the amount by which the borrower's disposable pay for the pay period exceeds 30 times the minimum wage. In a case where one or more guaranty agencies have issued wage garnishment orders with respect to the same individual borrower, no single agency would be permitted to order withholding of a total amount exceeding 15 percent of the disposable pay for the pay period of a borrower to be withheld in response to all of the withholding orders it issued for its claims.

The proposed regulations would also add a new § 682.410(b)(9)(i)(M) which would permit a greater amount or percentage to be withheld if the borrower has given the employer written consent to the higher amount or percentage.

Reasons: One non-Federal negotiator argued that current § 682.410(b)(9)(i)(A) was not sufficiently clear with regard to the limits on the amount that may be subject to wage garnishment, especially in cases in which a borrower is subject to more than one withholding order. In an effort to clarify the rules regarding wage withholding, the Department agreed to propose new paragraphs (b)(9)(i)(K) through (M) to provide more clarity as well as the statutory basis for the applicable limits in section 488A(a)(1) of the HEA and 15 U.S.C. 1673(a)(2).

Borrower Hearing Requests (34 CFR 682.410(b)(9))

Statute: Sections 488A(a)(5) and (b) of the HEA provide borrowers with the opportunity to request a hearing concerning the existence or the amount of the debt and the terms of the repayment schedule.

Current Regulations: Current § 682.410(b)(9) requires the guaranty agency to offer the borrower an opportunity for a hearing concerning the existence or the amount of the debt and the terms of the repayment schedule. The current regulations provide that the guaranty agency may not issue a withholding order until the hearing is provided, as long as the borrower's written request for a hearing is received by the guaranty agency within 15 days after the borrower's receipt of the

garnishment notice. The current regulations further provide that a borrower is considered to have received the garnishment notice 5 days after it was mailed by the agency. Finally, current regulations provide that if the borrower's written request for a hearing is received by the guaranty agency after the 15-day period, the guaranty agency must provide a hearing to the borrower but must still go forward with the withholding order (unless the agency determines that the filing delay was caused by factors outside the borrower's control, or receives information that justifies a delay or cancellation of the order), and that the withholding order can be rescinded by a decision from the hearing official.

Proposed Regulations: The proposed regulations would replace current § 682.410(b)(9)(i)(K) with proposed § 682.410(b)(9)(i)(G) and change the current requirement that a borrower's written request for a hearing be received on or before the 15th day following the borrower's receipt of a garnishment notice to be assured of a hearing prior to issuance of a garnishment order. The proposed regulations would require that if a borrower's written request for a hearing is received on or before the 30th day following the date the garnishment notice was sent, the borrower would be assured of a hearing prior to issuance of a garnishment order. We are also proposing to delete the rule that a borrower is considered to have received a garnishment notice five days after it was mailed by the agency.

The Department has decided to retain the requirement in current § 682.410(b)(9)(i)(L) (now proposed § 682.410(b)(9)(i)(H)) that if a borrower does not request a hearing within the 30-day time limit, the guaranty agency must go forward with the withholding unless the agency determines that the filing delay was caused by factors outside the borrower's control, or receives information that justifies a delay or cancellation of the order. If a borrower's request for a hearing is received after the 30th day, a guaranty agency is still required to provide a hearing in enough time to have a decision issued within 60 days of the date the guaranty agency received the hearing request. The Department would add to proposed § 682.410(b)(9)(i)(H) (which would replace current § 682.410(b)(9)(i)(L)) a provision specifying that if the hearing is not provided and a decision issued within 60 days following the receipt of the borrower's written request for a hearing, then the agency must suspend the order beginning on the 61st day until a decision is rendered.

Reasons: In the preamble to the final regulations issued by the Department on April 19, 1994, 59 FR 22462, 22475, we explained that we agreed with the public comments we had received stating that borrowers should be deemed to have received a garnishment notice five days after its mailing date to prevent disputes about the date the borrower received the notice. During the recent negotiated rulemaking sessions, a non-Federal negotiator requested that the time limit for when the guaranty agency must receive the borrower's written request for a hearing be measured against the date the garnishment notice was sent, rather than the date the borrower received the notice. The Department accepted this suggestion because measurement of the date the notice was sent is more readily verifiable than the date the notice was received. However, to balance this interest against the borrower's need for time to respond, the Department increased the time limit from 15 days to 30 days, consistent with a suggestion from another non-Federal negotiator.

The provision specifying suspension of the order on the 61st day was added to make explicit the consequence if a decision is not issued within the required time period.

Other Provisions Related to AWG (34 CFR 682.410(b)(9))

Statute: Section 488A of the HEA authorizes the Secretary and guaranty agencies in the FFEL Program to garnish up to 15 percent of a defaulted borrower's disposable income per pay period, unless the individual consents to a greater percentage or amount. The statute requires that a notice be sent to a borrower no less than 30 days prior to initiation of the garnishment proceedings against the borrower informing the borrower of the nature and amount of the debt, the intention of the guaranty agency or Secretary, as appropriate, to initiate garnishment, and an explanation of the rights of the borrower. The statute provides the borrower, among other rights, an opportunity for a hearing regarding the proposed garnishment.

Current Regulations: Section 682.410(b)(9) of the FFEL Program regulations includes the rules that govern the hearing notice and the conduct of the hearing in cases of administrative wage garnishment by a guaranty agency.

Current paragraph (b)(9)(i)(B) requires a guaranty agency to mail to the borrower's last known address, at least 30 days before the initiation of garnishment proceedings, a written notice of the nature and amount of the debt, the intention of the agency to initiate proceedings to collect the debt through deductions from the borrower's pay, and an explanation of the borrower's rights. Current paragraphs (b)(9)(i)(C) and (b)(9)(i)(D) require a guaranty agency to offer the borrower an opportunity to inspect and copy agency records related to the debt and an opportunity to enter into a written repayment agreement.

Proposed Regulations: The proposed regulations would amend § 682.410(b)(9)(i)(B) of the FFEL Program regulations to enumerate the elements that a guaranty agency must include in the garnishment notice it sends to a defaulted borrower. Under the proposed regulations, the notice would: Describe the nature and amount of the debt; the intention of the agency to collect the debt through deductions from the borrower's disposable pay; provide an explanation of the borrower's rights; identify the deadlines by which the borrower must exercise those rights; and describe the consequences of the failure to exercise those rights in a timely manner.

The proposed regulations would add new paragraph (b)(9)(i)(J), which would specify the rules under which the hearing would be conducted, including provisions for granting continuances. Specifically, the proposed regulations would require that the hearing be conducted as an informal proceeding, require witnesses in an oral hearing to testify under oath or affirmation, and require maintenance of a summary record of any hearing. Proposed paragraph (b)(9)(i)(J) would also allow the borrower to request a continuance of the hearing to submit additional evidence or the agency to request and receive from the hearing officer a reasonable extension of time sufficient to enable the agency to evaluate and respond to any additional evidence or any objections raised pursuant to paragraph (b)(9)(i)(F)(*1*)(*ii*).

The proposed regulations would also add new paragraph (b)(9)(i)(O), which would provide for the withholding order to be effective until the guaranty agency rescinds the order or the agency has fully recovered the amount owed by the borrower.

The proposed regulations would redesignate paragraphs (b)(9)(i)(F) through (b)(9)(i)(I) of § 682.410 as new paragraphs (b)(9)(i)(P) through (b)(9)(i)(S). Proposed § 682.410(b)(9)(i)(Q) would clarify that a borrower who wishes to object to the garnishment on the basis that he or she is not subject to garnishment because of involuntary separation from employment bears the burden of raising

and proving that claim. Proposed § 682.410(b)(9)(i)(S) would enumerate the information that a guaranty agency must include in the withholding order sent to the employer. The order may only include the information necessary for the employer to comply with the withholding order. Accordingly, under the proposed regulations, the order must include the borrower's name, address, and SSN, as well as instructions for the employer's withholding of the borrower's pay and information as to where the employer must send the withheld funds.

The proposed regulations would redesignate paragraph § 682.410(b)(9)(i)(O) as new paragraph (b)(9)(i)(U).

Finally, § 682.410(b)(9)(ii) of the proposed regulations would add definitions for certain terms used in paragraph (b)(9)(i). These definitions were incorporated from other sections of the existing FFEL Program regulations and other Department regulations.

Reasons: A non-Federal negotiator requested that the regulations be revised to include an expanded description of what would be permissible information to include in the garnishment notice sent to defaulted borrowers. In an effort to provide clear regulatory guidance to guaranty agencies sending such notices and to ensure that borrowers fully understand the garnishment process and its implications, the Department is proposing to list the required components of the garnishment notice in the regulations.

The Department added language in new paragraph (b)(9)(i)(J) to emphasize that the hearing official in an administrative wage garnishment hearing must conduct the hearing as an informal proceeding, require witnesses in an oral hearing to testify under oath or affirmation, and maintain a summary record of the hearing. The Department added this language because FFEL Program garnishment hearings and decisions, like those conducted by the Department, may be subject to judicial review. This judicial review is based on a review of the administrative record. The proposed regulatory language ensures that the guaranty agency will have a record appropriate for judicial review that includes not only the decision issued, but also a summary record of the proceedings showing the evidence considered and the procedure followed by the guaranty agency.

The Department proposes to allow a borrower to request a continuance of the hearing if the borrower needs more time to gather, prepare, and present additional evidence. Proposed paragraph (b)(9)(i)(F)(*1*)(*ii*) would allow a borrower to raise permissible objections during the hearing even if they were not raised in the borrower's written request for a hearing. Because a borrower has a limited period of time to request a hearing, and gathering evidence in preparation for such a hearing may identify an additional basis for the borrower to object to the garnishment, the Department agreed with a negotiator's proposal to allow the borrower to raise these objections any time prior to completion of the hearing and to request a continuance if the borrower requires more time to present evidence. At the suggestion of another non-Federal negotiator, proposed paragraph (b)(9)(i)(J) would require the hearing official to grant a guaranty agency's request for a continuance to provide time for the agency to respond to such an objection. We propose this requirement to ensure that the agency has sufficient time to respond to an objection from the borrower, especially because the borrower may raise the objection without prior notice to the guaranty agency.

Proposed paragraph (b)(9)(i)(O) specifies the process by which a wage withholding order may be terminated by the guaranty agency and was drafted to reflect similar rules under 34 CFR 34.26. The proposed regulations would require a withholding order to be effective until the guaranty agency rescinds the order or the amount owed has been fully recovered. Under the proposed regulations, if the borrower does not have enough pay in a pay period to permit withholding, the employer must notify the guaranty agency and restart garnishment when the borrower's pay is sufficient. We propose this language to provide full information and clarity with regard to the withholding process for both the employer and the guaranty agency.

Proposed paragraphs (b)(9)(i)(P) through (b)(9)(i)(S) are similar to paragraphs (b)(9)(i)(F) through (b)(9)(i)(I) of the current regulations but would be reordered by this proposed rule. These provisions, and paragraph (b)(9)(i) generally, were reordered to reflect the chronological processes of garnishment notification, hearing, and withholding orders, and to provide a more logical order to the proposed regulations.

The Department proposes to add new paragraph (b)(9)(i)(Q) to clarify that a borrower bears the burden of claiming involuntary separation from employment. The Department proposes to place that burden on the borrower because such information is more easily accessible to and reportable by the borrower rather than by the guaranty agency.

At the request of a non-Federal negotiator, new paragraph (b)(9)(i)(S) specifies the contents of the withholding order, to ensure that the order reflects the information necessary for the employer to comply with the withholding order.

The proposed regulations would redesignate current paragraph (b)(9)(i)(O) as new paragraph (b)(9)(i)(U). This new paragraph would reflect the statutory provision that allows a borrower to seek judicial relief against an employer for taking adverse employment action against the borrower because of the garnishment. As with other provisions in paragraph (b)(9)(i), this paragraph was reordered to reflect the chronological processes of garnishment notification, hearing, and withholding orders, and to provide a more logical order to the proposed regulations.

Section 682.410(b)(9)(ii) of the proposed regulations would add definitions for certain terms used in paragraph (b)(9)(i). The Department incorporated these definitions from existing FFEL Program regulations to provide clarity and readily-available definitions that affect the preceding sections.

Modification of the FFEL Program Regulations (34 CFR Part 682)

Background: As noted earlier, the SAFRA Act ended the making of new FFEL Program loans as of July 1, 2010. The current FFEL Program regulations in 34 CFR part 682 contain numerous provisions that are no longer needed in light of this change. The regulations that are no longer needed include those governing: The FFEL loan application process and use of the master promissory note; interest rates for loans originated after July 1, 2010; lender loan origination, refinancing, and disbursement requirements; fees for refinanced loans; lender disclosures for newly originated loans; school loan delivery and entrance counseling requirements for first-time borrowers; and school and school-affiliated organization lender requirements. The current regulations also contain other provisions that are no longer needed, including regulations that require a guaranty agency to: provide lender-of-last-resort services to borrowers; establish regulations for eligible schools to participate in the guaranty agency's program; and guarantee loans up to specified annual and aggregate limits. Other regulations that are no longer necessary include those that: Specify a borrower's responsibility in the loan origination process; govern a guaranty agency's authority to limit and suspend

school participation in its program; govern a guaranty agency's required area of service in guaranteeing loans; prohibit guaranty agencies from offering inducements to prospective borrowers, schools and school-affiliated organizations, or to any individual or entity to secure loan applications; bar guaranty agencies from assessing additional costs or denying benefits to schools and lenders participating in the agency's program on the basis of that entity's failure to agree to participate or to provide a specified volume of loans for the agency's guarantee; and prohibit guaranty agencies from offering incentive payments or other inducements to a lender to secure additional loan guarantees.

The current FFEL Program regulations contain other provisions that the Department believes are obsolete. Subpart E of 34 CFR part 682 includes regulations governing the Federal Insured Student Loan (FISL) Program. No new FISL Program loans have been made since 1983. Accordingly, subpart E and appendix C to subpart E, which provides guidance for curing lender due diligence violations on FISL Program loans, are no longer needed. In addition, the FFEL Program regulations include some sections implementing certain time-limited provisions of the HEA, such as the regulations governing the creation of the guaranty agencies' Operating Funds and Federal Funds and the regulations governing Federal nonliquid assets held by a guaranty agency. These regulations are no longer applicable and can be eliminated from the Code of Federal Regulations. To address these issues, the Department proposes the following technical changes to the FFEL Program regulations:

- Eliminating provisions governing loan origination and disbursement and related requirements and activities except for certain school-based requirements and related activities.
- Eliminating obsolete provisions that do not reflect the current procedures in the FFEL Program.
- Making necessary conforming changes in various provisions to clarify the regulations.

The Department is retaining all of the FFEL Program definitions, the provisions and sections of the regulations that govern the servicing and collection of FFEL loans, the guaranty agency program requirements that are still applicable, and the lender participation requirements.

During the negotiated rulemaking sessions, the Department provided the non-Federal negotiators with a detailed overview of the planned technical changes to the FFEL Program regulations that identified all the regulatory provisions and sections recommended for elimination, identified other provisions that required conforming and other clarifying technical changes or corrections, and provided the rationale for each proposed technical change.

During the negotiations, many non-Federal negotiators representing lenders, guaranty agencies, and loan servicers raised questions about the Department's plan to eliminate the regulations dealing with loan origination and disbursement, the FISL Program, and a guaranty agency's maintenance of its Federal Fund and Operating Fund in the first few years after those funds were established. These negotiators argued that the FISL provisions should be retained because there are still some outstanding FISL loans to which some of the regulations may apply and that provisions governing loan origination and disbursement are needed because they are relevant to guaranty agency oversight of lenders and the review of lender claims, and were often helpful in resolving borrower disputes. These same negotiators stated that the regulations governing a guaranty agency's maintenance of the Federal Fund and Operating Fund should be retained because there were cross-references to these sections elsewhere in the regulations. The Department indicated that it sees no basis for retaining regulatory provisions that are no longer supported in the HEA or that are obsolete. The Department pointed out that there were fewer than 500 FISL loans in repayment, many of them defaulted loans held by the Department, and also noted that lender requirements and activities that were subject to guaranty agency oversight remained enforceable even if the regulatory provisions governing them are not included in future copies of the Code of Federal Regulations. The Department agreed to eliminate and make other necessary changes to address cross-references that would be rendered obsolete by the planned technical changes.

One non-Federal negotiator representing legal assistance organizations asked the Department to retain § 682.103, which identifies the applicability of the various subparts in the regulations because the negotiator felt it was a useful index to the regulatory subparts. The same negotiator also requested that § 682.209(k), which acknowledges that a lender may be subject to any claims and defenses a borrower could assert against a school with respect to a loan under certain circumstances, be retained to facilitate borrowers raising such defenses against repayment. The negotiating committee agreed to retain these two provisions.

A non-Federal negotiator representing the guaranty agencies asked that the Department remove provisions in current § 682.401(e) identifying guaranty agency payments and activities that do not represent prohibited incentives to secure new loan guarantees. The negotiator stated that removing provisions identifying prohibited payments and activities while retaining the related permissible activities and payments would result in misleading regulations and was unnecessary. The negotiating committee agreed to remove these provisions. The non-Federal negotiators representing lenders, guaranty agencies, and loan servicers also identified additional technical corrections and minor clarifying technical edits that the negotiating committee agreed to make.

Following the Department's review and discussion with the non-Federal negotiators of the technical changes and corrections the Department proposed to make in the FFEL Program regulations and the rationale for those changes, the negotiating committee agreed the changes should be made to update and streamline the regulations.

The more substantive technical changes to the FFEL Program regulations are discussed below. A complete summary of the proposed technical changes to 34 CFR part 682 is found in Appendix A at the end of this NPRM.

Subpart A—Purpose and Scope

§ 682.102 Obtaining and Repaying a Loan

Statute: Sections 428(a)(2)–(6), 428B (a) and (b), and 428C(b) of the HEA authorize the application process for FFEL Stafford, PLUS, and Consolidation loans.

Current Regulations: Section 682.102(a)–(d) of the current regulations provide a general description of the process by which an individual requests a Stafford, PLUS, or Consolidation loan. Current § 682.102(e) of the regulations provides a general summary of FFEL Program loan repayment.

Proposed Regulations: The proposed regulations would amend the heading of § 682.102 to read ''Repaying a loan,'' remove § 682.102(a)–(d), which detail the application process for Stafford, PLUS, and Consolidation loans, and redesignate the paragraphs in current § 682.102(e), which describes the loan repayment process, as § 682.102(a)–(g).

Reasons: Under the SAFRA Act, no new FFEL Program loans may be made after June 30, 2010. Accordingly, the provisions that relate to the making of new FFEL Program loans are no longer needed.

Subpart B—General Provisions

§ 682.200 Definitions

Lender

Statute: Section 435(d)(7) of the HEA specifies the requirements for an eligible lender that makes or holds FFEL loans as a trustee for an institution of higher education or a school-affiliated organization. Under the HEA, the trustee lender: May not make loans to undergraduate students at the school; may only make Federal Stafford Loans to graduate and professional students at that school; and may only offer loans with an origination fee or an interest rate, or both, that are less than the fee or rate otherwise authorized for such loans in the HEA. In addition, the loans must be included in an annual compliance audit that meets the requirements in section 435(d)(8) of the HEA.

Current Regulations: Sections 682.601(a)(3), (a)(5), and (a)(7) of the current regulations and paragraphs (7) and (8) of the definition of ''Lender'' in § 682.200(b) reflect the requirements of section 435(d)(7) and (8) of the HEA.

Proposed Regulations: The proposed regulations would move the provisions of current § 682.601(a)(3), (a)(5), and (a)(7) to paragraph (8) of the definition of ''Lender'' in § 682.200(b), and remove from the regulations the remainder of § 682.601.

Reasons: We are proposing to remove § 682.601 from the regulations because (as a result of the SAFRA Act) no new loans are being made under the FFEL Program and therefore most of the provisions in that section are no longer relevant. However, the requirements governing lenders operating as trustees on behalf of a school or a school-affiliated organization that serves as a FFEL lender were retained and relocated to the definition of ''Lender'' consistent with section 435(d)(7) of the HEA.

Nationwide Consumer Reporting Agency

Statute: A ''nationwide consumer reporting agency'' is defined in 15 U.S.C. 1681a(p).

Current Regulations: The current regulations at § 682.200(b) define ''nationwide consumer reporting agency'' through a cross-reference to 15 U.S.C. 1681(a).

Proposed Regulations: The proposed regulations would amend the definition of ''nationwide consumer reporting agency'' to include a more specific statutory citation for the definition of ''nationwide consumer reporting agency'' at 15 U.S.C. 1681a(p), and to specify that a ''nationwide consumer reporting agency'' is one that compiles and maintains public record and credit account information on consumers on a nationwide basis.

Reasons: The changes would correct the statutory citation for the definition and reflect the terminology used in that statute.

Satisfactory Repayment Arrangements

Statute: Section 428F(b) of the HEA provides that a borrower with a defaulted loan may renew eligibility for title IV student financial assistance after making six consecutive monthly payments on the defaulted loan. The required monthly payment amount cannot be more than is reasonable and affordable based on the borrower's total financial circumstances. A borrower is limited to one opportunity to regain eligibility for title IV student financial assistance under this provision.

Current Regulations: The definition of ''satisfactory repayment arrangement'' in current § 682.200(b) reflects the statutory requirements and specifies that the required six consecutive monthly payments must be on-time, voluntary, full monthly payments. For this purpose, ''voluntary payments'' are those made directly by the borrower and do not include payments obtained by income tax offset, garnishment, or income or asset execution. The regulations state that ''on-time'' means a payment received by the Secretary or a guaranty agency or its agent within 15 days of the scheduled due date. For purposes of consolidating a defaulted loan in the FFEL Program, ''satisfactory repayment arrangements'' means the making of three consecutive, on-time voluntary full monthly payments on a defaulted loan.

Proposed Regulations: The proposed regulations would replace the current cross-reference to § 682.401(b)(4) in paragraph (1) of the definition of ''satisfactory repayment arrangement'' with language explaining that the definition applies to a borrower who is trying to regain eligibility under the title IV student financial assistance programs. The proposed regulations would also remove current paragraph (2) of the definition, which relates to FFEL Program loan consolidation, and renumber current paragraph (3) as paragraph (2).

Reasons: The change to paragraph (1) of the definition is intended to clarify that a borrower making satisfactory repayment arrangements on a defaulted loan regains eligibility for all title IV assistance programs, not just eligibility for additional title IV loans. Paragraph (2) of the definition is no longer needed because no new FFEL Consolidation loans are being made.

§ 682.204 Maximum Loan Amounts

Statute: Sections 428(b)(1)(A) and (B) and 428H(d) of the HEA specify the annual and aggregate loan limits that apply to Subsidized and Unsubsidized Stafford loans for undergraduate and graduate and professional students in the FFEL and Direct Loan programs.

Current Regulations: Section 682.204 of the current FFEL Program regulations reflects the annual and aggregate loan limits specified in the HEA. The loan limits are the combined limits for borrowing under the FFEL Stafford Loan (Subsidized and Unsubsidized) and Direct Subsidized and Unsubsidized Loan programs. The current regulations also include the Stafford Loan annual and aggregate loan limits for loans first disbursed prior to July 1, 2008 and, in § 682.204(f), the annual loan limits for loans made under the Supplemental Loans for Students (SLS) program.

Proposed Regulations: The proposed regulations would remove references throughout current § 682.204 to the annual and aggregate Stafford Loan limits that existed prior to July 1, 2008 and would also remove § 682.204(f), which includes the SLS annual loan limits. The remaining paragraphs in the section would be redesignated as paragraphs (f)–(l). All references in § 682.204 to the Federal Direct Stafford/Ford Loan Program would be replaced by references to the Direct Subsidized or Direct Unsubsidized Loan Program, as applicable. Section 682.204(a)(1)(iii), (c)(1)(iii) (current (c)(1)(ii)(C), and (d)(1)(iii)) would be amended to correct the numerator of the second fraction used to calculate the prorated annual loan limit when a student is enrolled in a program of study that is less than a full academic year in length. Specifically, the numerator would be revised to show the number of weeks that the student is enrolled in the program rather than the number of weeks in the program.

Reasons: The proposed regulations would retain only the loan limits that were in effect as of July 30, 2010, the last date that new loans were made under the FFEL Program. The pre-July 1, 2008, annual and aggregate loan limits that had ceased to be effective two years before the last new FFEL Program loans

were made would be removed from the regulations. Similarly, the SLS annual loan limits would be removed because the authority to make loans under that program ended effective July 1, 1994.

For consistency with proposed changes in the Direct Loan Program regulations, references to ''Federal Direct Stafford/Ford Loans'' and ''Federal Direct Unsubsidized Stafford/Ford Loans'' would be changed to ''Direct Subsidized Loans'' and ''Direct Unsubsidized Loans,'' respectively.

The changes in § 682.204(a)(1)(iii), (c)(1)(iii) (current (c)(1)(ii)(C)), and (d)(1)(iii)) are necessary to make the numerator of the second fraction consistent with the numerator of the first fraction that appears in each of these paragraphs. In the first fraction, the numerator refers to the number of semester, trimester, quarter, or clock hours that the student is enrolled in the program.

§ 682.205 Disclosure Requirements for Lenders

Statute: Section 433(a) of the HEA requires each FFEL lender to provide a disclosure to a borrower prior to or at the time a FFEL PLUS loan, Stafford loan, or Unsubsidized Stafford loan is disbursed. The disclosure must include:

(1) A statement prominently and clearly displayed and in bold print that the borrower is receiving a loan that must be repaid;

(2) The name of the eligible lender, and the address to which communications and payments should be sent;

(3) The principal amount of the loan;

(4) The interest rate on the loan;

(5) Any charges or fees that may be assessed on the loan;

(6) The borrower's option to pay accruing interest on an unsubsidized loan while the borrower is a student at an institution of higher education and the timing and frequency of capitalization if interest is not paid;

(7) For loans made to a parent borrower on behalf of a student under section 428B, information about deferring payment on the loan;

(8) The yearly and cumulative maximum amounts that may be borrowed;

(9) A cumulative balance statement of all loans owed by the borrower to the lender, including the loan being disbursed, and an estimate of the projected monthly payment, given such cumulative balance;

(10) Information on repayment of the loan; and

(11) The definition of default and the consequences to the borrower of defaulting on the loan.

Section 433(c) of the HEA also requires the lender to provide a separate disclosure to a borrower each time a new loan is approved which summarizes, in simple and understandable terms, the rights and responsibilities of the borrower with respect to the loan. Section 428C(b)(1)(F) of the HEA requires that when a lender provides a borrower with an application for a consolidation loan, the lender must provide the borrower with information on whether consolidation would result in the loss of any loan benefits for the borrower. The lender providing the consolidation loan application must also inform the borrower that loan benefits may vary among lenders, tell the borrower that simply applying for a consolidation loan does not obligate the borrower to take out the loan, provide information on available repayment plans, and explain the consequences to the borrower of defaulting on a consolidation loan.

Current Regulations: Section 682.205(a) of the current regulations reflects the requirements of section 433(a) of the HEA. This regulatory section details the initial disclosure a FFEL lender must provide to a borrower prior to or at the time of the first disbursement of a PLUS, Stafford, or Unsubsidized Stafford loan. Consistent with section 433(c) of the HEA, § 682.205(b) and (g) of the regulations require a separate notice of borrower rights and responsibilities and a plain language disclosure each time a new PLUS, Stafford, or Unsubsidized Stafford loan is approved for a borrower. Section 682.205(i) requires that at the time a lender provides a Consolidation loan application to a borrower, the lender must disclose the information specified in section 428C(b)(1)(F) of the HEA.

Proposed Regulations: The proposed regulations would remove § 682.205(a), (b), (g), and (i) from the FFEL Program regulations and renumber the remaining provisions.

Reasons: The SAFRA Act ended the authority to make new FFEL Program loans, including new FFEL Consolidation loans. As a result, the lender disclosure requirements for new loans are no longer needed and thus should be removed from the regulations.

§ 682.206 Due Diligence in Making a Loan

Statute: Title IV, part B of the HEA includes the terms and conditions of FFEL Program loans and the requirements for lenders making FFEL Program loans.

Current Regulations: Consistent with title IV, part B of the HEA, § 682.206 of the current regulations requires a FFEL lender to exercise due diligence in making a loan. Loan making duties include determining the borrower's loan amount, approving the loan, explaining to the borrower his or her rights and responsibilities, and confirming that each loan is supported by an executed enforceable promissory note or master promissory note. The regulations also require a FFEL lender, prior to making a Consolidation loan, to collect from the holder of each loan being repaid through the Consolidation loan a certification that the loan is a legal, valid, and binding obligation of the borrower, that the loan was made and serviced in compliance with applicable law and regulations, and that, where applicable, the loan's guarantee remains in full force and effect. Before making a Consolidation loan, a lender must also notify the applicant of the option to cancel the Consolidation loan before it is made and provide the deadline for the applicant to exercise this option.

Proposed Regulations: The proposed regulations would remove § 682.206 from the FFEL Program regulations.

Reasons: The SAFRA Act eliminated the authority to make new FFEL Program loans, including new FFEL Consolidation loans. As a result, the requirements governing the making of new FFEL Program loans are no longer needed and thus should be eliminated from the regulations.

§ 682.207 Due Diligence in Disbursing a Loan

Statute: Sections 428(b)(1)(N), 428B(c), and 428G of the HEA detail the disbursement requirements for FFEL Stafford and PLUS loans. Section 428G of the HEA requires that loan proceeds be disbursed in two or more installments over the course of the loan period, based on a disbursement schedule provided to the lender by the school, unless: (1) The loan period is not more than one semester, one trimester, one quarter, or four months in duration; and (2) the school has a cohort default rate below a certain specified level. Section 428G(e) of the HEA allows the proceeds of a loan to be disbursed in a single installment if the loan is made to a student to cover the cost of attendance in a study abroad program offered by a school with a cohort default rate below a certain specified level. Section 428G(a) specifies that no installment may exceed more than one-half of the loan. Under section 428G(b), loans may not be disbursed earlier than 30 days prior to the first day of the loan period and first time borrowers in undergraduate courses of study may not receive the first installment until 30

days after beginning their course of study. Under section 428G(d), second or subsequent installments of a loan cannot be disbursed if the lender is informed that the student has withdrawn from the school and a disbursement that is withheld for this reason is treated as a prepayment on the borrower's loan. Section 428(b)(1)(N) requires that funds borrowed by a student be disbursed to the school by check or other means that is payable to, and requires the endorsement of or other certification by, the student. This provision also authorizes, in certain circumstances, the direct disbursement of loan proceeds to the student if the student is enrolled in a study abroad program or is enrolled at an eligible foreign school. Section 428B(c) of the HEA requires PLUS loans to be disbursed in accordance with the requirements of section 428G of the HEA, and to be disbursed by electronic funds transfer to the school or in the form of a check co-payable to the school and the PLUS borrower.

Current Regulations: Section 682.207 of the regulations reflects the requirements in the HEA for disbursement of Stafford and PLUS loans.

Proposed Regulations: The proposed regulations would remove § 682.207 from the FFEL Program regulations.

Reasons: The SAFRA Act ended the authority to make new FFEL Program loans. As a result, the requirements governing loan disbursement are no longer needed and thus should be removed from the regulations.

§ 682.209 Repayment of a Loan

Statute: Section 428(b)(7) of the HEA provides that the repayment period on a Federal Stafford loan begins the day after six months after the date the student ceases to carry at least one-half the normal full-time academic workload as determined by the institution. Section 428B(e) of the HEA authorizes the refinancing of FFEL PLUS loans to secure a combined repayment plan or to secure a variable interest rate. Section 493C of the HEA, governing the IBR plan, provides for a borrower's loan payment to be less than the accruing interest on the loan.

Current Regulations: Section 682.209(a)(3) specifies when repayment on a Federal Stafford Loan begins. Section 682.209(e) and (f) govern the refinancing of PLUS and SLS loans, respectively, and paragraph (g) specifies the conditions under which these loans may be refinanced. Section 682.209(j) requires a lender, within 10 business days after receiving a written request for a certification of payoff information on loans it holds in connection with a borrower's Consolidation loan application, to provide the requesting consolidation lender with either the completed certification or an explanation of the reasons it is unable to do so.

Proposed Regulations: The proposed regulations would amend § 682.209(a)(3)(i) by adding new paragraph § 682.209(a)(3)(i)(D), which specifies that borrowers with Stafford loans that have fixed interest rates of 6 percent, 5.6 percent, or 6.8 percent enter repayment on those loans the day after six months following the date the borrower was no longer enrolled on at least a half-time basis. The proposed regulations would remove current § 682.209(e) through (g) and (j) from the regulations and redesignate the remaining paragraphs as paragraphs (e) through (g). Redesignated § 682.209(e) (current paragraph (h)) would be amended to specify that a FFEL Consolidation loan borrower repaying under the IBR plan may make a scheduled monthly payment of less than the interest that accrues on the loan.

Reasons: For consistency with the HEA, proposed new paragraph § 682.209(a)(3)(i)(D) would clarify when borrowers with certain fixed interest rate Stafford loans enter repayment on those loans. The proposed change to newly redesignated § 682.209(e) would clarify that the scheduled monthly payment amount for a Consolidation Loan borrower repaying under the income-based repayment plan may be less than the amount of accruing interest on the loan, which would otherwise be required under all other FFEL repayment plans. Current § 682.209(e), (f), (g), and (j) of the regulations are removed because no new FFEL loans are being made.

§ 682.210 Deferment

Statute: Section 428(b)(1)(M) of the HEA authorizes deferments to FFEL Program borrowers when they are: (1) Pursuing at least a half-time course of study at an eligible institution; (2) pursuing a course of study pursuant to a graduate fellowship program approved by the Secretary or rehabilitation training program for disabled individuals approved by the Secretary; (3) seeking but unable to find full-time employment; (4) serving on active duty or performing qualifying National Guard duty during a war or other military operation or national emergency; or (5) experiencing an economic hardship as defined in section 435(o) of the HEA.

Current Regulations: Section 682.210(a) of the FFEL Program regulations contains a number of provisions that describe the terms of and the rules for granting deferments on FFEL Program loans. Section 682.210(a)(1) of the regulations reflect the prior statutory provision that provided for a six-month post-deferment grace period for borrowers with loans made before October 1, 1981. Paragraph (b) of this section lists the authorized deferments available to borrowers who received FFEL Program loans as new borrowers prior to July 1, 1993. Paragraphs (c) through (e) and (h) of § 682.210 contain the eligibility criteria that all FFEL borrowers must meet to qualify for an in-school, graduate fellowship, rehabilitation training program, or unemployment deferment. Paragraphs (f) through (g) and (i) through (r) of § 682.210 contain the eligibility criteria for deferments that are available to individuals who borrowed as new borrowers before July 1, 1993. Paragraphs (s) through (v) contain the eligibility criteria for deferments available to new borrowers on or after July 1, 1993, military service deferments, and deferments available to PLUS loan borrowers on loans first disbursed on or after July 1, 2008. Section 682.210(t)(7) of the regulations permits the representative of a borrower who is serving in the military to request a military service deferment on the borrower's behalf.

Proposed Regulations: The proposed regulations would amend § 682.210(a)(4) of the regulations to provide, consistent with § 682.210(t)(7), that a borrower's representative may request a military service deferment on behalf of the borrower. In § 682.210(b), the introductory language in paragraphs (b)(1) through (6) of § 682.210 would be revised to clearly identify the cohort of borrowers to which each paragraph applies. Throughout § 682.210(b) cross-references would be added to the eligibility criteria described in paragraphs (c) through (r) of § 682.210 that are applicable to deferments available to these borrowers. The proposed regulations would also amend § 682.210(s)(2) by removing the exception clause at the end of the provision, and would amend § 682.210(u)(5) by replacing the words ''military active'' with ''post-active.''

Reasons: The proposed regulations would amend § 682.210(a)(4) to facilitate deferment requests by borrowers serving in the military by further clarifying that a representative of the borrower may apply for the deferment on the borrower's behalf.

The proposed changes in § 682.210(b) would clearly identify the pre-July 1, 1993, cohorts of new borrowers to which the paragraph applies and would

distinguish the deferments available to these borrowers from those available to new borrowers on or after July 1, 1993. Technical changes would be made in § 682.210(b)(i) to correct a cross-reference, clarify that the deferment granted to borrowers in the specified cohort are subject to the procedural requirements described in § 682.210(c), and remove obsolete language related to borrowers attending schools operated by the Federal government and to borrowers who are not U.S. nationals attending schools that are not located in a State.

The clause at the end of § 682.210(s)(2) should be removed because no FFEL borrowers are required to take out a new Stafford or SLS loan to qualify for an in-school deferment. A technical change would be made in § 682.210(u)(5) to clarify that the provision applies to borrowers seeking a post-active duty student deferment rather than a military service deferment.

§ 682.214 Compliance With Equal Credit Opportunity Requirements

Statute: The Equal Credit Opportunity Act, 15 U.S.C. 1601 et seq., is intended to protect applicants for consumer credit, including student loans, against discrimination.

Current Regulations: Current § 682.214 provides that a lender making subsidized Federal Stafford Loans must comply with the requirements of the Equal Credit Opportunity Act regulations issued by the Board of Governors of the Federal Reserve System in Regulation B (12 CFR part 202).

Proposed Regulations: The proposed regulations would remove § 682.214 from the FFEL Program regulations.

Reasons: The SAFRA Act ended the making of new FFEL loans and therefore these requirements should be eliminated from the FFEL regulations.

Subpart C—Federal Payments of Interest and Special Allowance

§ 682.300 Payment of Interest Benefits on Stafford and Consolidation Loans

Statute: Section 428(a)(3) of the HEA provides that the Secretary will pay the interest on Stafford Loans on behalf of eligible borrowers during certain periods. Section 428(a)(3)(A)(v) of the HEA specifies that a lender may not receive interest payments on a loan for a period any earlier than 10 days before the first disbursement of a loan if the loan is disbursed by check, three days before the first disbursement of the loan if the loan is disbursed by electronic funds transfer, or three days before the disbursement of the loan if the loan is disbursed through an escrow agent on behalf of the lender. Section 428(a)(7) of the HEA specifies that a lender may not charge interest or receive interest subsidies or special allowance payments on loans for which the disbursement checks have not been cashed or for which the electronic funds transfers have not been completed.

Current Regulations: Section 682.300(c) details the circumstances under which the Secretary will not make interest payments to a loan holder. Section 682.300(c)(3) and (4) of the regulations reflect the statutory limitations on interest billing on the first disbursement of a subsidized Stafford loan and on loans for which the check has not been cashed or the electronic funds transfer has not been completed.

Proposed Regulations: The proposed regulations would remove § 682.300(c)(3) and (4) from the FFEL Program regulations.

Reasons: As a result of the SAFRA Act, no new FFEL Program loans will be made, and thus these provisions should be eliminated from the regulations.

§ 682.301 Eligibility of Borrowers for Interest Benefits on Stafford and Consolidation Loans

Statute: Section 428(a)(2)(E) of the HEA specifies that in determining whether a student has the financial need to qualify for the interest subsidy on a FFEL Stafford loan, the expected family contribution of the student for the academic year for which financial need is being determined may be offset by Unsubsidized Stafford loans, parent PLUS loans, and loans under any State-sponsored or private loan program that are made for that same academic year.

Current Regulations: Section 682.301(c) of the regulations reflects § 428(a)(2)(E) of the HEA.

Proposed Regulations: The proposed regulations would remove § 682.301(c) from the regulations.

Reasons: As a result of the SAFRA Act, no new FFEL Program loans will be made and, thus, this provision related to determining borrower eligibility for the interest subsidy on new loans should be eliminated from the FFEL regulations.

§ 682.305 Procedures for Payment of Interest Benefits and Special Allowance and Collection of Origination and Loan Fees

Statute: Section 428(b)(1)(U)(iii)(I) of the HEA requires a lender that holds or originates more than $5,000,000 in FFEL loans during the lender's fiscal year to submit to the Department an annual compliance audit conducted by a qualified, independent organization or individual. Section 435(d)(2)(A)(vii) of the HEA specifies that an institution of higher education engaging in activities as an eligible lender must submit to the Secretary an annual compliance audit conducted in accordance with the requirements of section 428(b)(1)(U)(iii)(I) of the HEA.

Current Regulations: Section 682.305(c) of the regulations reflects the statutory requirement that a FFEL lender originating or holding more than $5 million in FFEL Program loans during its fiscal year must submit an annual independent lender compliance audit. Section 682.305(c)(1)(ii) specifies that, regardless of the dollar volume of loans originated or held, a school lender or an eligible lender serving as trustee for a school or school-affiliated organization for the purpose of originating FFEL loans must submit an independent compliance audit to the Department each year. Section 682.305(c)(2)(vi) and (c)(2)(vii) details the compliance review requirements for such a school or trustee lender audit.

Proposed Regulations: The proposed regulations would remove the reference in § 682.305(c)(1)(i) to FFEL lenders originating loans.

Reasons: As a result of the SAFRA Act, no new loans are being made in the FFEL Program. Therefore, we are eliminating references to the origination of loans from this regulation.

Subpart D—Administration of the Federal Family Education Loan Programs by a Guaranty Agency

§ 682.401 Basic Program Agreement

Statute: Sections 428(b) through (o) of the HEA contain the requirements that apply to a guaranty agency administering the FFEL Program under agreements with the Department.

Current Regulations: Section 682.401 of the regulations reflects the statutory requirements that apply to a guaranty agency in the FFEL Program, including the following provisions:

- Paragraphs (b)(1) and (b)(2) of the regulations require a guaranty agency to make loans available to borrowers up to the annual and aggregate loan limits specified in the HEA;
- Paragraph (b)(3) specifies the duration of the borrower's eligibility;
- Paragraph (b)(5) describes the borrower's responsibilities in the loan origination process;
- Paragraph (b)(6) details the eligibility requirements for a school to participate in a guaranty agency's program;
- Paragraphs (b)(8) and (b)(9) outline when a guaranty agency must guarantee loans for students attending out-of-state

schools and for out-of-state residents; and

• Paragraphs (b)(12) and (b)(13) authorize a guaranty agency to charge lenders an administrative fee for Consolidation loans and refinanced loans.

Section 682.401(c) of the regulations requires a guaranty agency to ensure that it, or an eligible lender described in section 435(d)(1)(D) of the HEA, serves as a lender-of-last-resort for students who are otherwise unable to secure Federal Stafford loans. Section 682.401(d)(4) authorizes the multi-year use of the Master Promissory Note (MPN). Section 682.401(e) specifies certain prohibited and allowed activities by guaranty agencies.

Proposed Regulations: The proposed regulations would remove from § 682.401(b) paragraphs (1), (2), (3), (5), (6), (8), (9), (12), and (13) and renumber the remaining provisions. The proposed regulations would also remove § 682.401(c), (d)(4), and (e) and redesignate current paragraphs (d), (f), and (g) as paragraphs (c), (d), and (e), respectively. In newly redesignated § 682.401(c) (currently § 682.401(d)), paragraphs § 682.401(c)(5) and (6) would be redesignated as (c)(4) and (5), respectively.

Reasons: The regulatory provisions that we are proposing to remove from § 682.401 address new FFEL loan originations, the process supporting these originations, and a guaranty agency's efforts to secure new FFEL loan volume. These provisions should be eliminated from the regulations because no new FFEL loans are being made. The remaining provisions proposed for elimination relate to school eligibility to participate in a guaranty agency's program and the authority of an agency to limit, suspend, or terminate a school from its program. For purposes of new loans, schools now participate only in the Direct Loan Program. Any future actions to limit, suspend, or terminate a school's participation in the student loan programs will be undertaken by the Department under 34 CFR part 668, subpart G. Therefore, § 682.401(b)(6) should also be eliminated from the FFEL regulations.

§ 682.403 Federal Advances for Claim Payments

Statute: Sections 422(a) through (c) of the HEA authorize the Secretary to provide Federal advances to guaranty agencies for various purposes spelled out in the HEA.

Current Regulations: Section 682.403 of the FFEL regulations reflects the Department's authority to provide advances under certain circumstances to a State guaranty agency or to one or more private, nonprofit guaranty agencies in a State in certain circumstances and specifies the conditions under which the Department will provide such advances.

Proposed Regulations: The proposed regulations would remove § 682.403 from the FFEL Program regulations.

Reasons: Congress has not appropriated funds for advances to guaranty agencies for many years, and such funding is unnecessary as a result of the end of new loan originations in the FFEL Program. The Department notes that most of the advances made to the guaranty agencies were returned to the Secretary in accordance with sections 422(d), (h), and (i) of the HEA.

§ 682.408 Loan Disbursement Through an Escrow Agent

Statute: Section 428(i) of the HEA authorizes a guaranty agency or a FFEL lender to act as an escrow agent by entering into an agreement with any other eligible lender that is not an eligible institution or an agency or instrumentality of the State for the purpose of disbursing FFEL Program loans to students.

Current Regulations: Section 682.408 of the FFEL Program regulations contains provisions governing the use of an escrow agent to make Federal Stafford and PLUS loan disbursements, including the nature of the agreement that must be established between the lender and the escrow agent, the escrow agent's authority, and the requirements for the transmittal and disbursement of the loan funds.

Proposed Regulations: The proposed regulations would remove § 682.408 from the FFEL regulations.

Reasons: As a result of the SAFRA Act, no new loan disbursements are being made in the FFEL Program. Therefore, this section is no longer needed and should be eliminated.

§ 682.418 Prohibited Uses of the Assets of the Operating Fund During Periods in Which the Operating Fund Contains Transferred Funds Owed to the Federal Fund

§ 682.420 Federal Nonliquid Assets

§ 682.421 Funds Transferred From the Federal Fund to the Operating Fund by a Guaranty Agency

§ 682.422 Guaranty Agency Repayment of Funds Transferred From the Federal Fund

Statute: We have grouped our discussion of §§ 682.418, 682.420, 682.421, and 682.422 together. Sections 422A and 422B of the HEA direct a guaranty agency to establish a Federal Student Loan Reserve Fund (referred to as the Federal Fund) and an Operating Fund to manage the funds it receives as a guaranty agency.

Section 422A(e) of the HEA provides that the Federal Fund and any nonliquid assets (such as a building or equipment) developed or purchased by a guaranty agency in whole or in part with Federal reserve funds are the property of the United States. The Federal interest in nonliquid assets is prorated based on the percentage of the asset developed or purchased with Federal reserve funds. The Secretary is authorized to restrict or regulate the use of such assets to the extent necessary to protect the Federal share of the asset.

Section 422A(f) of the HEA authorized a guaranty agency to transfer funds from its Federal Fund to establish the agency's Operating Fund for a period not to exceed three years following the establishment of the Operating Fund. The law also allowed a limited number of agencies, with the approval of the Secretary, to transfer interest earned on the Federal Fund to their Operating Fund for a three-year period. The HEA specifies that the agencies had to repay the transferred funds no later than five years from the date the Operating Fund was established, but also authorized the Secretary to waive that requirement for repayment of transferred amounts of earned interest for up to five additional years under certain circumstances.

Section 422B(e)(3) of the HEA specifies that during any period in which a guaranty agency owes transferred funds back to the Federal Fund, the guaranty agency is limited to using the Operating Fund only for expenses related to the FFEL Program.

Current Regulations: Section 682.418 of the FFEL regulations reflects the statutory limits on a guaranty agency's use of the Operating Fund while it contains funds transferred from the agency's Federal Fund. Section 682.420 reflects section 422A(e) of the HEA and specifies the permitted uses of the Federal portion of a nonliquid asset and the treatment of any revenue derived from the asset. Section 682.421 reflects the statutory authority for transferring funds and earned interest from a guaranty agency's Federal Fund to its Operating Fund and the requirements for requesting such a transfer. Section 682.422 reflects the timelines and requirements in section 422A(f) of the HEA for repayment of transferred funds back to the agency's Federal Fund.

Proposed Regulations: The proposed regulations would remove §§ 682.418, 682.420, 682.421, and 682.422 from the FFEL Program regulations.

Reasons: The Higher Education Amendments of 1998 required the financial restructuring of the guaranty agencies, including the requirement that each guaranty agency establish a Federal Fund and an Operating Fund. Under the terms of that law, the period during which an agency could transfer funds from the Federal Fund to its Operating Fund and the deadline for repayment of transferred funds back to the Federal Fund lapsed many years ago. Therefore, the regulations governing this process in §§ 682.418, 682.421, and 682.422 are obsolete and should be eliminated from the FFEL regulations. Similarly, the Department and the guaranty agencies have worked together to resolve each instance of nonliquid assets that were purchased or developed in whole or in part with Federal Reserve Funds and from which revenue could have resulted. Those guaranty agencies have reimbursed their Federal Funds for the value of the Federal interest. As a result, the requirements of § 682.420 are also obsolete and should be eliminated.

Subpart E—Federal Guaranteed Student Loan Programs

§§ 682.500–515 and Appendix C to the Regulations

Statute: Sections 423–425, 427, and 429–430 of the HEA authorize and establish the FISL Program, a Federal program of loan insurance for lenders that do not have reasonable access to State or private nonprofit guaranty agency loan programs.

Current Regulations: Subpart E of 34 CFR part 682 contains the regulations that govern the FISL Program. Appendix C to part 682 includes certain required procedures for FISL lenders for curing due diligence and timely filing violations.

Proposed Regulations: The proposed regulations would remove all of the regulations under subpart E (§§ 682.500 through 682.515) and reserve the subpart. The proposed regulations would also remove Appendix C to part 682 from the regulations.

Reasons: No new loans have been made in the FISL Program since 1983. There are fewer than 500 outstanding FISL loans, and many of those loans are in default and are held by the Department. Under these conditions, there is no need to retain the FISL Program regulations.

Subpart F—Requirements, Standards, and Payments for Participating Schools

§ 682.601 Rules for a School That Makes or Originates Loans

§ 682.602 Rules for a School or School-Affiliated Organization That Makes or Originates Loans Through an Eligible Lender Trustee

§ 682.608 Termination of a School's Lending Eligibility

Statute: We have grouped our discussion of §§ 682.601, 682.602, and 682.608 together. Section 435(d)(1)(E) of the HEA authorizes an institution of higher education to participate as an eligible lender in the FFEL Program if it meets the requirements in section 435(d)(2) through (d)(5) of the HEA. Section 435(d)(2)(A)(ix) of the HEA limits this eligibility to those schools that met the requirements on February 7, 2006, and that made loans on or before April 1, 2006. Section 435(d)(7) of the HEA limits the ability of an eligible lender to make or hold loans as a trustee for a school or a school-affiliated organization to eligible lenders serving in that capacity on September 29, 2006, based on a contract that was in effect before that date. Section 435(d)(7) also applies most of the requirements of section 435(d)(2) of the HEA (which apply to school lenders) to trustee arrangements between an eligible lender and a school or a school-affiliated organization for the purpose of originating loans. Section 435(d)(3) of the HEA provides that a school will be disqualified as an eligible lender if the default rate on the loans made by the school for each of two consecutive years is 15 percent or more of the total amount of the loans made by the school lender. Section 435(d)(4) of the HEA authorizes the Department to waive a determination that a school is disqualified as an eligible lender if the school can reasonably be expected to improve loan collections within one year after the determination is made or the termination would represent a hardship to the school's present or prospective students.

Current Regulations: Section 682.601 includes rules for schools that make or originate loans and reflects the requirements of section 435(d)(2) through (5) of the HEA. Section 682.602 reflects section 435(d)(7) of the HEA and provides the regulations for schools or school-affiliated organizations that make or originate loans through an eligible lender trustee. Section 682.608 details the procedures for terminating a school lender from the program.

Proposed Regulations: The proposed regulations would remove §§ 682.601, 682.602, and 682.608 from the FFEL Program regulations.

Reasons: The proposed regulations would remove §§ 682.601, 682.602, and 682.608 from the FFEL regulations because they are no longer needed. There are 12 school lenders that hold FFEL Program loans previously made to their students, and this number cannot increase. Under § 435(d)(2)(A)(ix) of the HEA no new school lenders could begin to participate after February 8, 2006. Additionally, no new loans are authorized to be made under the FFEL program by any lender after June 30, 2010.

§ 682.604 Processing the Borrower's Loan Proceeds and Counseling Borrowers

Statute: Sections 428(b)(1)(N), 428B(c), and 428G of the HEA detail the disbursement and school delivery requirements for FFEL Stafford and PLUS loan funds. Section 428G(a) of the HEA requires that loan proceeds be delivered to students in two or more installments over the course of the loan period unless: (1) The loan period is not more than one semester, one trimester, one quarter, or four months in duration, and (2) the school has a cohort default rate of less than 10 percent for each of the three most recent fiscal years for which data is available. Section 428G(e) provides that loan proceeds may be delivered in a single installment if the loan is made to a student to cover the cost of attendance in a study abroad program offered by an eligible home institution that has a cohort default rate of less than five percent, as calculated under section 435(m) of the HEA. Under section 428G(a)(1), no installment may exceed more than one-half of the loan. Section 428G(b) of the HEA provides that the first installment of a loan made to a new borrower who is entering the first year of a program of undergraduate study cannot be presented to the student for endorsement until 30 days after the borrower begins a course of study unless the school's cohort default rate is less than 10 percent for each of the three most recent fiscal years for which data is available. Section 428G(d)(2) of the HEA provides that the school must return a portion or all of an installment to the lender if the sum of a disbursement and the student's other financial aid exceeds the amount for which the student is eligible. Section 428(b)(1)(N) of the HEA requires that funds borrowed by the student must be disbursed by check or other means that is payable to the student and requires the endorsement or other certification by the student. Section 428B(c) of the HEA requires that PLUS loan proceeds

be disbursed in accordance with the requirements of section 428G of the HEA and be transmitted to the school through an electronic transfer of funds or in the form of a co-payable check to the school and the PLUS borrower. Section 485(b) of the HEA requires a school to conduct exit counseling with its FFEL Stafford and student PLUS borrowers, prior to the borrower's completion of his or her course of study or at the time the borrower leaves the school, and details the information that must be included in the exit counseling. Section 485(l) of the HEA requires the school to conduct entrance counseling with its first-time Stafford and student PLUS borrowers, at or prior to the school's delivery of the first disbursement of a loan. Section 485(l)(2) of the HEA details the information that must be included in the entrance counseling.

Current Regulations: Consistent with sections 428(b)(1)(N), 428B(c), 428G, and 485(l)(2), the current FFEL Program regulations in § 682.604 govern delivery of Stafford or PLUS loan proceeds to borrowers and counseling for borrowers. The school must confirm the student's enrollment, secure the student's endorsement or confirm the borrower's authorization for funds to be delivered and credited electronically. The current regulations also require the school to comply with the notification requirements of 34 CFR 668.165 prior to delivering loan proceeds to a borrower and authorize the school to deliver a late disbursement to a borrower under the conditions and using the procedures specified in 34 CFR 668.164(g).

Current § 682.604(f) requires a school to provide entrance counseling to its student borrowers during an in-person session, on a separate written form provided to the borrower that the borrower signs and returns to the school, or by online or interactive electronic means with the borrower acknowledging receipt of the information. The counseling must include the information specified in section 485(l) of the HEA. If the entrance counseling is conducted online or through interactive electronic means, the school must take reasonable steps to ensure that each student borrower receives the counseling materials and participates in and completes the counseling. The school must also maintain documentation that shows it provided the entrance counseling for each borrower.

Current § 682.604(g) requires a school to conduct exit counseling with its Stafford and PLUS loan student borrowers shortly before the borrower ceases at least half-time study at the school through an in-person session, by audiovisual presentation, or by interactive electronic means. Alternatively, the school may provide written counseling materials through the mail to borrowers who complete correspondence programs or study-abroad programs approved for credit by the school. For borrowers who withdraw from the school without the school's prior knowledge or who fail to complete the required exit counseling session, the regulations require the school to ensure that exit counseling is provided to the student borrower through interactive means or by mailing written counseling materials to the borrower at the student's last known address within 30 days of the school learning that the borrower withdrew from the school or failed to complete the exit counseling. Exit counseling must include the information specified in section 485(b) of the HEA, regardless of the form in which it is provided.

Proposed Regulations: The proposed regulations would change the heading of § 682.604 to ''Required exit counseling for borrowers.'' The proposed regulations would remove current paragraph (a), remove and reserve paragraph (b), and remove paragraphs (c) through (f) and (h). The proposed regulations would also redesignate current paragraph (g) as paragraph (a). Newly redesignated § 682.604(a)(1) would be amended to include another option for providing exit counseling to a student borrower who withdraws without the school's knowledge or fails to complete required exit counseling. In addition to the existing options described above under ''Current Regulations,'' a school could also send written counseling materials electronically to an email address provided by the student borrower. Newly redesignated § 682.604(a)(2) would be amended by replacing cross-references to current paragraph (a), which we are proposing to remove, with the substantive information contained in the cross-referenced provision that must be included in the counseling. A new paragraph (a)(5) would also be added to newly redesignated § 682.604(a) to clarify that: (1) A school's compliance with the Direct Loan Program exit counseling requirements in 34 CFR 685.304(b) satisfies the FFEL Program regulatory exit counseling requirements for student borrowers who received both FFEL and Direct Loan program loans for attendance at the school if the school provides the information required by redesignated § 682.604(a)(2)(i) and (a)(2)(ii); and (2) a student's completion of interactive exit counseling offered by the Secretary meets both the FFEL exit counseling requirements and the Direct Loan exit counseling requirements in 34 CFR 685.304(b).

Reasons: The provisions in current § 682.604 that govern school delivery of FFEL loan proceeds, required entrance counseling with new FFEL Program borrowers, and handling of excess loan proceeds that result from a borrower receiving an overaward are no longer needed in the regulations since no new loans are being made in the FFEL Program. The proposed change to redesignated § 682.604(a)(1) would incorporate into the regulations existing guidance that is in the Department's Federal Student Aid Handbook. Similarly, the addition of new paragraph (a)(5) would incorporate in the regulations guidance that the Department has previously provided in response to questions from schools about options for providing exit counseling to borrowers who have received loans through both the FFEL and Direct Loan programs for attendance at the same school. Because the FFEL and Direct Loan exit requirements are generally the same, the Department has previously permitted schools to provide a single exit counseling session to satisfy the exit counseling requirements for students who have received both FFEL and Direct Loan program loans for attendance at the school, provided that the counseling includes separate loan information for the loans made under each program. The Department has also previously clarified that the optional interactive electronic exit counseling offered by the Secretary is designed to satisfy the exit counseling requirements for borrowers who received only Direct Loans or those who receive both Direct Loans and FFEL Program loans.

Subpart G—Limitation, Suspension, or Termination of Lender or Third-Party Servicer Eligibility and Disqualification of Lenders and Schools

§ 682.702 Effect on Participation.

§ 682.704 Emergency Action

§ 682.705 Suspension Proceedings

§ 682.706 Limitation or Termination Proceedings

§ 682.709 Reimbursements, Refunds, and Offsets

Statute: We have grouped our discussions of §§ 682.702, 682.704, 682.705, 682.706, and 682.709 together. Section 432(h)(1) of the HEA authorizes the Department to initiate and impose limitation, suspension, and termination actions against lenders participating in

the FFEL Program if, after reasonable notice and opportunity for a hearing, the Department finds that the lender has substantially failed to: (1) Exercise care and diligence in the making and collecting of FFEL loans, (2) make reports or statements that support interest and special allowance payments to the lender, or (3) pay required loan insurance premiums to a guaranty agency, or the lender has engaged in fraudulent or misleading advertising or solicitations that resulted in loans being made to ineligible borrowers or made in violation of the certification requirements of section 428 of the HEA.

Current Regulations: Section 682.702 details the effects on a lender of the Department's action to limit, suspend, or terminate the lender from participation in the FFEL Program. Section 682.704 states that the Department or a guaranty agency may take an emergency action against a lender to stop new loan guarantees being issued to the lender and to withhold payment of interest and special allowance payments to the lender under conditions identified in the regulations. Sections 682.705 and 682.706 detail the procedures for a suspension action or a limitation or termination action against a lender or third-party servicer. Sections 682.705(c) and 682.706(d) of the regulations both provide that if an action to suspend, limit, or terminate a lender is based on a violation of section 435(d)(5) of the HEA, and the Secretary, a designated Departmental official, or a hearing official finds that the lender provided prohibited payments or engaged in prohibited activities, the Secretary or official will apply a rebuttable presumption that the payments or activities were offered to secure applications for FFEL loans or to secure new FFEL loan volume. Section 682.709 provides that as part of a limitation or termination proceeding, the Department may require a lender or third-party servicer to take reasonable corrective action, which may include payments to the Department or other designated parties in the form of a refund, reimbursement, or offset.

Proposed Regulations: Section 682.702(b)(1) would be revised to remove the reference to a lender making loans and current paragraphs (b)(2) and (d) would be removed. Section 682.702(b)(3) would be redesignated as § 682.702(b)(2). Section 682.704(a) would be amended to remove the reference to stopping the issuance of guarantee commitments by the Secretary and guaranty agencies. Section 682.705(a)(1) would be amended to remove the reference to new loans made by a lender and § 682.705(c) would be removed. Section 682.706 would be amended to remove paragraph (d). Section 682.709 would be amended to add new paragraph (d) that provides for the application of a rebuttable presumption related to future limitation and termination actions that may involve findings of violations of section 435(d)(5) of the HEA.

Reasons: Since no new FFEL loans are being made, the regulations on possible sanctions on lenders for violations of FFEL Program requirements no longer should include limits on new loan volume or loan guarantee commitments. The application of a rebuttable presumption as part of a suspension proceeding or limitation or termination action against a lender will apply to existing loans and past lender activities during the period when the potential for new loan applicants and increased loan volume existed in the FFEL Program. As a result, references to the application of a rebuttable presumption would be removed from §§ 682.705 and 682.706 and incorporated as new paragraph (d) in § 682.709 of the regulations.

§ 682.713 Disqualification Review of Limitation, Suspension, and Termination Actions Taken by Guaranty Agencies Against a School

Statute: Section 432(h)(3) of the HEA requires the Department to review any limitation, suspension, or termination imposed on an eligible school by a guaranty agency under its authority in section 428(b)(1)(T) of the HEA within 60 days of the guaranty agency's notification that the agency has imposed such a sanction, unless the school waives its right to a review in writing. The Department must uphold the guaranty agency's imposition of the sanction and notify the agency if the review is waived by the school. If the review is not waived, the Department must determine whether the agency's sanction was imposed in accordance with the requirements of section 428(b)(1)(T) of the HEA. The Department's review of the agency's sanction of the school is limited to a review of the written record of the proceedings in which the agency imposed the sanction.

Current Regulations: Section 682.713 of the regulations reflects the statutory requirements of section 432(h)(3) of the HEA.

Proposed Regulations: The proposed regulations would remove § 682.713 from the FFEL regulations.

Reasons: As a result of the SAFRA Act, all schools now participate in the Direct Loan Program and are subject to oversight by the Department. The Department is the only party that will take any limitation, suspension, or termination action taken against a school that participates in the Direct Loan Program.

Subpart H—Special Allowance Payments on Loans Made or Purchased With Proceeds of Tax-Exempt Obligations

§ 682.800 Prohibition Against Discrimination as a Condition for Receiving Special Allowance Payments

Statute: Section 438(e) of the HEA states that for the holder of loans made or purchased with funds from an Authority issuing tax-exempt obligations to receive special allowance payments, the Authority cannot engage in any pattern or practice which results in a denial of borrower access to FFEL Program loans on the basis of a borrower's race, sex, color, religion, national origin, age, disability status, income, attendance at a particular eligible institution within the area served by the Authority, the length of the borrower's educational program, or the borrower's academic year in school.

Current Regulations: Section 682.800 of the regulations reflects the statutory requirements of section 428(e) of the HEA and provides that if an Authority makes or acquires loans made or guaranteed by an organization that discriminates on one or more of the grounds listed, the Department will consider the Authority to have adopted a discriminatory practice on that basis unless the Authority provides for making loans to the excluded borrowers using other resources.

Proposed Regulations: The proposed regulations would remove subpart F of part 682, which consists of § 682.800, from the FFEL regulations.

Reasons: As a result of the SAFRA Act, no new FFEL loans are being made with tax-exempt or other funds and this provision of the FFEL regulations is no longer needed.

Direct Loan Program Issues

Minimum Loan Period for Transfer Students in Non-Term and Certain Non-Standard Term Programs (34 CFR 685.301)

Statute: The HEA does not specify the minimum period for which a school may originate a Direct Loan for a student who transfers from one school into a non-term or non-standard term program at another school.

Current Regulations: (**Note:** The regulatory citations in the discussion that follows refer to § 685.301(a)(9) as set forth in the second Editorial Note at the end of § 685.301 in 34 CFR Part 685,

revised as of July 1, 2012.) Under § 685.301(a)(9)(i)(A), for a school that measures academic progress in credit hours and uses a semester, trimester, or quarter system, or that has terms substantially equal in length, with no term less than nine weeks in length, the minimum period for which the school may originate a Direct Loan is a single academic term (*e.g.,* a semester or quarter).

Under current § 685.301(a)(9)(i)(B), for a school that measures academic progress in clock hours, or measures academic progress in credit hours but does not use a semester, trimester, or quarter system and does not have terms that are substantially equal in length with no term less than nine weeks in length, the minimum period for which a school may originate a Direct Loan is the lesser of: (1) The length of the student's program at the school (or the remaining portion of the program); or (2) the academic year as defined by the school in accordance with 34 CFR 668.3. Current § 685.301(a)(9)(ii) provides an exception to this requirement in the case of a student who transfers into a school with credit or clock hours from another school, and the loan period at the prior school overlaps the loan period at the new school. In this circumstance, the new school may originate a loan for the remaining balance of the program or the academic year that started at the prior school, in an amount up to the remaining balance of the borrower's annual loan limit (as determined in accordance with § 685.203) after subtracting the amount borrowed for attendance at the prior school. After this initial loan period, the student becomes eligible for a new annual loan limit, with a new loan period corresponding to the lesser of the program (or the remaining portion of the program) or academic year at the new school. If the new school does not accept any transfer hours from the prior school, the exception does not apply and the transfer student is limited to receiving no more than the remaining balance under the applicable annual loan limit for the entire program or academic year at the new school, whichever is less.

The following example illustrates the application of the current regulation: A student who received $2,750 in a combination of Direct Subsidized and Direct Unsubsidized Loan funds (out of a maximum annual loan limit of $5,500) for a loan period from October 31, 2011, to June 8, 2012, at School A transfers into a 1500-clock hour program at School B that begins on March 5, 2012. School B defines the academic year for the program as 900 clock hours and 26 weeks of instructional time.

If School B accepts credit or clock hours from School A, current § 685.301(a)(9)(ii) allows School B to originate an initial loan for a loan period that begins on March 5, 2012, and ends on June 8, 2012, the ending date of the original loan period at School A. For this initial loan period, the student could receive a loan of up to $2,750, the difference between the $5,500 annual loan limit and the loan amount the student received for the overlapping loan period at School A. After the balance of the loan period from School A ends (*i.e.,* starting on June 9, 2012), the student could receive a new loan for a new academic year or, if there is less than an academic year remaining in the program at School B, for the remainder of the program.

However, if School B does not accept any transfer hours from School A, in accordance with current § 685.301(a)(9)(i)(B), the initial loan period for the program at School B would be March 5, 2012, to August 31, 2012, corresponding to the period in which the student is expected to complete the first academic year of the program (900 clock hours and 26 weeks of instructional time). In addition, the student's maximum loan eligibility for that loan period would be $2,750 (the difference between the annual loan limit of $5,500 and the $2,750 previously received for the overlapping loan period at School A).

Proposed Regulations: The proposed regulations would redesignate current § 685.301(a)(9)(ii) as § 685.301(a)(10)(ii) and modify the exception to the minimum loan period requirement discussed under ''Current Regulations'' by removing the provision that limits the exception to situations where the school the student transfers to accepts credit or clock hours from the prior school. Under proposed § 685.301(a)(10)(ii), if a student transfers into a school that measures academic progress in clock hours, or measures academic progress in credit hours but does not use a semester, trimester, or quarter system and does not have terms that are substantially equal in length with no term less than nine weeks in length, and the prior school originated a loan for a loan period that overlaps the loan period at the new school, the new school may originate a Direct Loan for the remaining portion of the program or academic year that began at the prior school, regardless of whether the new school accepts credit or clock hours from the prior school. For this loan period, the student would be eligible to receive up to the difference between the applicable annual loan limit and the loan amount the student received at the prior school for the overlapping loan period. Using the example presented above under ''Current Regulations,'' the proposed regulations would allow School B in all cases to originate a Direct Loan of up to $2,750 for the loan period from March 5, 2012, to June 8, 2012.

Reasons: The exception to the minimum loan period rule in current § 685.301(a)(9)(ii) applies only if the new school accepts credit or clock hours from the school that the student previously attended. If the new school does not accept any transfer hours from the prior school, the exception does not apply and the transfer student is limited to receiving no more than the remaining balance under the applicable annual loan limit for the entire program or academic year at the new school, whichever is less. Thus, in some cases a student may be eligible to receive loans only up to one full annual loan limit for a combined period of enrollment at the two schools that is significantly longer than one academic year. The Department believes that the limited scope of the current regulatory exception to the minimum loan period rule provides a benefit to only a minority of transfer students (since many schools do not accept credit or clock hours from other schools) and may in some cases discourage students from transferring to different schools. Therefore, the Department proposes to modify the current regulations by removing the provision that allows the exception to be applied only if the new school accepts credit or clock hours from the prior school. The non-Federal negotiators supported this proposal.

Modification of the Direct Loan Program Regulations (34 CFR Part 685)

Background: The current Direct Loan Program regulations in 34 CFR Part 685 include numerous cross-references to the FFEL Program regulations in 34 CFR Part 682 for provisions that apply in both loan programs, such as the definitions of certain terms and the eligibility requirements for certain types of loan deferments. For certain provisions that apply in both the FFEL and Direct Loan programs, the Direct Loan Program regulations do not include language that is currently only in the corresponding FFEL Program regulations. The Direct Loan Program regulations also include a number of provisions that are outdated and do not reflect current procedures. To address these issues, the Department proposes to make technical changes to the Direct

Loan Program regulations that would include:

- Adding provisions to 34 CFR Part 685 that apply in the Direct Loan Program, but are currently included only in 34 CFR Part 682, so that it will no longer be necessary to refer to the FFEL Program regulations for certain terms and conditions of Direct Loan Program loans;
- Where necessary, modifying existing Direct Loan Program regulations for consistency with the corresponding FFEL Program regulations; and
- Removing obsolete provisions that do not reflect current procedures used in the Direct Loan Program.

The proposed changes to the Direct Loan Program regulations also include minor technical and conforming changes in various regulations to correct errors and present information more clearly. In addition, the proposed changes reflect: (1) The provisions of the SAFRA Act that eliminate new loans under the FFEL Program after June 30, 2010; (2) the provisions of the Consolidated Appropriations Act, 2012 (Pub. L. 112–74) that eliminate the grace period interest subsidy on Direct Subsidized Loans with a first disbursement date on or after July 1, 2012, and before July 1, 2014, and that eliminate Federal student aid eligibility for students without a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate; (3) the provision of the Budget Control Act of 2011 (Pub. L. 112–25) that eliminates Direct Subsidized Loan eligibility for graduate or professional students effective for loan periods beginning on or after July 1, 2012; and (4) the provision of the Higher Education Opportunity Act (Pub. L. 110–315) that replaced the term ''credit bureau'' with the term ''consumer reporting agency.''

During the public negotiating sessions, the Department provided the non-Federal negotiators with a comprehensive overview of the proposed technical changes to the Direct Loan Program regulations and explained the rationale for each proposed technical change. Following the Department's review and discussion of these proposed changes with the non-Federal negotiators, the negotiating committee agreed that the changes should be made. During the negotiations, the non-Federal negotiators also recommended additional minor technical changes throughout 34 CFR part 685 for clarity and consistency. The proposed regulations incorporate many of these additional recommended technical changes.

A complete summary of all of the proposed technical changes to 34 CFR part 685 may be found in Appendix B at the end of this NPRM. A discussion of the more significant proposed technical changes follows.

Modification of Direct Loan Program Regulations: Definitions (34 CFR 685.102)

Statute: The definitions included in this section reflect definitions and the use of terms in various sections of the HEA, including provisions of parts B, D, and G. The Department has already placed some of these definitions in our regulations.

Current Regulations: Current § 685.102(a)(3) refers to the FFEL Program regulations in 34 CFR part 682 for the definitions of the following terms: ''Act,'' ''endorser,'' ''Federal Insured Student Loan (FISL) Program,'' ''Federal Stafford Loan Program,'' ''guaranty agency,'' ''holder,'' ''legal guardian,'' ''lender,'' and ''totally and permanently disabled.'' Current § 685.102(b) contains definitions of the following terms: ''alternative originator,'' ''consortium,'' ''default,'' ''estimated financial assistance,'' ''Federal Direct Consolidation Loan Program,'' ''Federal Direct PLUS Program,'' ''Federal Direct Stafford/Ford Loan Program,'' ''Federal Direct Unsubsidized Stafford/Ford Loan Program,'' ''grace period,'' ''interest rate,'' ''loan fee,'' ''Master Promissory Note,'' ''payment data,'' ''period of enrollment,'' ''satisfactory repayment arrangement,'' ''school origination option 1,'' ''school origination option 2,'' ''servicer,'' and ''standard origination.''

Proposed Regulations: The proposed regulations would remove § 685.102(a)(3) and add all of its definitions, except ''legal guardian,'' to § 685.102(b). The regulations would also add a definition of ''substantial gainful activity'' to § 685.102(b).

The definitions currently included only in the FFEL Program regulations at § 682.200 would be added to § 685.102(b) without any changes, except for the definitions of ''holder'' and ''lender.'' The regulations propose a new definition of ''holder'' as the entity that owns a loan. The regulations would further specify that for a FFEL Program loan, the term ''holder'' refers to an eligible lender owning a FFEL Program loan, including a Federal or State agency or an organization or corporation acting on behalf of such an agency and acting as a conservator, liquidator, or receiver of an eligible lender. The proposed definition of ''lender'' would state that this term has the meaning specified in section 435(d) of the HEA for purposes of the FFEL Program.

The proposed regulations would further amend § 685.102(b) by removing the definitions of ''alternative originator,'' ''consortium,'' ''school origination option 1,'' ''school origination option 2,'' ''servicer,'' and ''standard origination,'' and by revising the definitions of ''Master Promissory Note (MPN)'' and ''satisfactory repayment arrangement.''

The proposed regulations would add a new paragraph (4) to the definition of ''Master Promissory Note (MPN)'' stating that unless the Secretary determines otherwise, a school may use a single MPN as the basis for all loans borrowed by a student or parent for attendance at that school. Proposed new paragraph (4) would further provide that if a school is not authorized for multi-year use of the MPN, a borrower must sign a new MPN for each academic year.

The definition of ''satisfactory repayment arrangement'' would be revised by adding a new paragraph (2)(ii) providing that, for the purpose of consolidating a defaulted loan into a Direct Consolidation Loan, a borrower may make satisfactory repayment arrangements by agreeing to repay the Direct Consolidation Loan under one of the income-contingent repayment plans described in § 685.209 or the income-based repayment plan described in § 685.221. Additional proposed changes to the definition of ''satisfactory repayment arrangement'' are discussed earlier in the ''Significant Proposed Regulations'' section of this preamble under the heading ''Satisfactory Repayment Arrangements.''

Reasons: The Department is proposing to expand § 685.102(b) to include definitions that apply in the Direct Loan Program but that are currently included only in the FFEL Program regulations. Readers will not have to refer to 34 CFR part 682 for these definitions.

The definition of ''legal guardian,'' currently listed in § 685.102(a)(3), would not be added to § 685.102(b) because that term is not used in 34 CFR part 685.

Although it is not currently listed in § 685.102(a)(3), a definition of ''substantial gainful activity'' would also be added to § 685.102(b). This term is defined in § 682.200(b) of the FFEL Program regulations and also applies in the Direct Loan Program.

The definitions of ''holder'' and ''lender'' would be modified to fit the Direct Loan Program. The current definition of ''holder'' in § 682.200(b)

applies only to holders of FFEL Program loans. However, the term ''holder'' as used in the Direct Loan Program regulations also covers holders of other types of loans. The current definition of ''lender'' in § 682.200(b) includes numerous provisions relevant for purposes of the FFEL Program that would not be included in the definition in § 685.102(a)(3) because they are not needed for the Direct Loan Program.

The definitions of ''alternative originator,'' ''consortium,'' ''school origination option 1,'' ''school origination option 2,'' and ''standard origination'' would be removed from § 685.102(b) because they describe options for school participation in the Direct Loan Program that have not been used by schools or reflect obsolete provisions that are no longer used in the administration of the program.

The term ''servicer'' would be removed because the Department is proposing to replace all uses of the term ''servicer'' elsewhere in the Direct Loan Program regulations with ''Secretary'' to ensure consistent terminology throughout 34 CFR part 685.

The proposed change to the definition of ''Master Promissory Note (MPN)'' would simplify the regulations by incorporating a provision governing multi-year use of the MPN that is in current § 685.402(f) into the definition of MPN in § 685.102(b). This provision would also be updated to reflect the Secretary's policy on the authority of schools to use the MPN as a multi-year promissory note.

Similarly, the proposed change to the definition of ''satisfactory repayment arrangement'' would provide greater clarity by incorporating in that definition, with minor technical changes, a provision for making satisfactory repayment arrangements that is currently in § 685.220(d)(1)(ii)(D).

Modification of Direct Loan Program Regulations: Deferment (34 CFR 685.204)

Statute: Section 455(f)(2) of the HEA provides that a Direct Loan borrower is eligible for a deferment during any period when the borrower is: enrolled at least half-time at an eligible institution; pursuing a course of study pursuant to a graduate fellowship program approved by the Secretary, or pursuant to a rehabilitation training program for individuals with disabilities approved by the Secretary; seeking and unable to find full-time employment (for not more than three years); serving on active duty or performing qualifying National Guard duty during a war or other military operation or national emergency, and for the 180-day period following the demobilization date for such service; or experiencing (for not more than three years) an economic hardship as determined in accordance with regulations prescribed under section 435(o) of the HEA.

Section 455(f)(4) of the HEA provides that a Direct Loan borrower who has an outstanding balance on a FFEL Program loan made before July 1, 1993, at the time the borrower applies for a Direct Loan, is eligible for deferments under section 427(a)(2)(C) or section 428(b)(1)(M) of the HEA as those sections were in effect on July 22, 1992.

Section 428B(d)(1) of the HEA, which applies to Direct Loan borrowers through section 455(a)(1) of the HEA, provides that a parent Direct PLUS Loan borrower may defer repayment of a Direct PLUS Loan that was first disbursed on or after July 1, 2008, during any period when the student on whose behalf the loan was obtained is enrolled at least half-time at an eligible school and during the six-month period after the student ceases to be enrolled at least half-time.

Finally, section 493D of the HEA authorizes a deferment for the 13-month period following the conclusion of active duty service for a Direct Loan borrower who is a member of the National Guard or other reserve component of the U.S. Armed Forces and who is called or ordered to active duty while he or she is enrolled at least half-time at an eligible school or within six months of having been enrolled at least half-time.

Current Regulations: Current § 685.204(a) provides that interest does not accrue on a subsidized Direct Loan during periods of deferment.

Current § 685.204(b) provides that a Direct Loan borrower is eligible to receive a deferment while he or she is—

- enrolled at least half-time at an eligible school (in-school deferment);
- pursuing a course of study in a graduate fellowship program approved by the Secretary (graduate fellowship deferment);
- pursuing an approved rehabilitation training program for individuals with disabilities that is approved by the Secretary (rehabilitation training program deferment);
- seeking but unable to find full-time employment (unemployment deferment); or
- experiencing an economic hardship (economic hardship deferment).

This section also sets forth the eligibility requirements for a borrower to receive an in-school deferment.

Current § 685.204(b) does not specify the requirements for a graduate fellowship program or rehabilitation training program to be approved by the Secretary. For the graduate fellowship and rehabilitation training program deferments, the Direct Loan Program regulations rely on the eligibility criteria in §§ 682.210(d) and 682.210(e) of the FFEL Program regulations. For the unemployment and economic hardship deferments, current § 685.204(b) refers to the FFEL Program regulations in §§ 682.210(h) and 682.210(s)(6), respectively, for eligibility requirements and procedures.

Current § 685.204(c) states that a period of deferment based on unemployment or economic hardship may not exceed three years.

Current § 685.204(d) states that a Direct Loan borrower who had an outstanding balance on a FFEL Program loan that was made prior to July 1, 1993, at the time the borrower applied for his or her first Direct Loan Program loan is eligible for all of the deferments described in § 685.204 and the deferments described in § 682.210(b), including deferments that apply to a ''new borrower'' as that term is defined in § 682.210(b)(7). The latter deferments include deferments based on: Having a temporary total disability, caring for a disabled dependent, serving in the military, serving in the United States Public Health Service, serving as a Peace Corps volunteer, performing volunteer service in the ACTION programs, performing volunteer service for a tax-exempt organization, serving in an internship or residency program, caring for a newborn or newly adopted child, serving in the National Oceanic and Atmospheric Administration Corps, teaching in a teacher-shortage area, and being a full-time working mother of a preschool-age child.

Current §§ 685.204(e) and 685.204(f) specify the eligibility requirements for a deferment based on active-duty military service (military service deferment) and the 13-month post-active-duty deferment authorized by section 493D of the HEA (post-active-duty student deferment), respectively.

Current § 685.204(g) contains the eligibility criteria for deferments for Direct PLUS Loan borrowers with loans first disbursed on or after July 1, 2008, as authorized under section 428B(d)(1) of the HEA (in-school PLUS deferment).

Current § 685.204(h) specifies that a borrower whose loan is in default is not eligible for a deferment, unless the borrower has made payment arrangements satisfactory to the Secretary.

Current § 685.204(i) describes the Secretary's procedures for granting deferments and the Secretary's actions after a deferment has been granted.

Proposed Regulations: The proposed regulations would significantly restructure current § 685.204 without changing any of the deferment eligibility requirements.

Proposed § 685.204(a) would include general deferment provisions. Specifically, proposed § 685.204(a)(1) and (a)(2) would include, with only minor technical changes, the same provisions related to interest subsidy during deferment periods that are in current § 685.204(a)(1) and (a)(2). In addition, proposed § 685.204(a)(2) would be expanded to include the last sentence of § 685.204(b)(1)(iii)(B)(*2*), which notes that the Secretary provides borrowers with information about the effect of interest capitalization at or before the time a deferment is granted.

Proposed § 685.204(a)(3) would contain the provision currently in § 685.204(h) stating that a borrower whose loan is in default is not eligible for a deferment unless the borrower has made payment arrangements satisfactory to the Secretary.

Proposed § 685.204(a)(4) would contain, with minor technical changes, the procedures for requesting a deferment that are in current §§ 685.204(i)(1) and 685.204(i)(5).

Proposed § 685.204(a)(5) would include, with minor technical changes, provisions currently in §§ 685.204(i)(2), 685.204(i)(3), and 685.204(i)(4) describing the Secretary's procedures for granting a deferment and the actions taken by the Secretary after granting a deferment.

Reasons: To improve the clarity of the regulations, general deferment requirements that are currently in §§ 685.204(a), 685.204(b), 685.204(h), and § 685.204(i) would be consolidated in § 685.204(a), followed by individual sections, designated §§ 685.204(b) through (j), containing the requirements for the various deferment categories.

Proposed Regulations: Proposed § 685.204(b) would include the eligibility requirements and procedures for the in-school deferment that are in current §§ 685.204(b)(1)(i)(A) and 685.204(b)(1)(iii).

Reasons: To make the deferment regulations easier to read, the graduate fellowship, rehabilitation training program, unemployment, and economic hardship requirements that are in current § 685.204(b) would be moved to separate paragraphs within § 685.204, leaving only the in-school deferment requirements and procedures in § 685.204(b).

Proposed Regulations: Proposed § 685.204(c) would include the eligibility requirements for the in-school PLUS deferment that are in current § 685.204(g).

Reasons: Because the in-school PLUS deferment requirements are similar to the requirements for a student's in-school deferment, they would be moved to proposed § 685.204(c), immediately following the in-school deferment requirements in proposed § 685.204(b).

Proposed Regulations: Proposed § 685.204(d) would include the eligibility requirements for the graduate fellowship deferment that are in current § 685.204(b)(1)(i)(B) and (b)(1)(ii), as well as the eligibility criteria for this deferment that apply in the Direct Loan Program but that are currently only in the FFEL Program regulations.

Reasons: To make the Direct Loan Program regulations comprehensive and eliminate the need to refer to the FFEL Program regulations, all requirements for the graduate fellowship deferment would be placed in § 685.204(d).

Proposed Regulations: Proposed § 685.204(e) would include the eligibility requirements for the rehabilitation training program deferment that are in current § 685.204(b)(1)(i)(C), as well as the eligibility criteria for this deferment that apply in the Direct Loan Program but that are currently only in the FFEL Program regulations.

Reasons: To make the Direct Loan Program regulations comprehensive and eliminate the need to refer to the FFEL Program regulations, all requirements for the rehabilitation training program deferment would be placed in § 684.204(e).

Proposed Regulations: Proposed § 685.204(f) would include the eligibility requirements for the unemployment deferment that are in current § 685.204(b)(2), as well as the eligibility criteria and procedures for this deferment that apply in the Direct Loan Program but that are currently only in the FFEL Program regulations. Proposed § 685.204(f)(1) would include the provision, currently in § 685.204(c), that an unemployment deferment may not exceed three years.

Reasons: To make the Direct Loan Program regulations comprehensive and eliminate the need to refer to the FFEL Program regulations, all requirements and procedures for the unemployment deferment would be included in § 685.204(f). For greater clarity, proposed § 685.204(f) would also incorporate the three-year limit that is currently in § 685.204(c) so that this provision will be included with all of the other requirements of the deferments to which it applies instead of in a separate stand-alone section of the deferment regulations.

Proposed Regulations: Proposed § 685.204(g) would include the eligibility requirements for the economic hardship deferment that are in current § 685.204(b)(3), as well as the eligibility requirements and procedures for this deferment that apply in the Direct Loan Program but that are currently only in the FFEL Program regulations. Proposed § 685.204(g)(1) would include the provision, currently in § 685.204(c), that an economic hardship deferment may not exceed three years.

Reasons: To make the Direct Loan Program regulations comprehensive and eliminate the need to refer to the FFEL Program regulations, all requirements and procedures for the economic hardship deferment would be placed in § 685.204(g). For greater clarity, proposed § 685.204(g) would incorporate the three-year limit that is currently in § 685.204(c) so that this provision will be included with all of the other requirements of the deferments to which it applies instead of in a separate stand-alone section of the deferment regulations.

Proposed Regulations: Proposed § 685.204(h) would include the eligibility requirements for the military service deferment that are in current § 685.204(e).

Reasons: Because of the restructuring of § 685.204, just described, current § 685.204(e) would be redesignated as § 685.204(h).

Proposed Regulations: Proposed § 685.204(i) would include the requirements for the post-active-duty student deferment that are in current § 685.204(f).

Reasons: Because of the restructuring of § 685.204, just described, current § 685.204(f) would be redesignated as § 685.204(i).

Proposed Regulations: Proposed § 685.204(j) would contain the provisions currently in § 685.204(d) stating that a Direct Loan program borrower who had an outstanding balance on a FFEL Program loan that was made prior to July 1, 1993, at the time the borrower applied for his or her first Direct Loan Program loan is eligible for all of the deferments described in § 685.204 and the additional deferments described in § 682.210(b) of the FFEL Program regulations, including deferments that apply to a ''new borrower'' as that term is defined in § 682.210(b)(7).

Reasons: Because of the restructuring of § 685.204, just described, current § 685.204(d) would be redesignated as § 685.204(j). Proposed § 685.204(j) would continue to refer to the FFEL Program regulations, as under current

§ 685.204(d). Because relatively few Direct Loan borrowers qualify for these deferments, the Department believes it is preferable to retain the current cross-reference to the FFEL Program regulations in this one case rather than to significantly expand § 685.204 by adding eligibility criteria for deferment types that are not available to the great majority of Direct Loan borrowers.

Modification of Direct Loan Program Regulations: Consolidation (34 CFR 685.220)

Statute: Section 455(a)(1) of the HEA provides that unless otherwise specified under part D of the HEA, loans made under part D have the same terms, conditions, and benefits as loans made, and first disbursed before July 1, 2010, under sections 428, 428B, 428C, and 428H in part B of the HEA.

Section 428C(a)(3)(B)(i)(I) provides that, in general, a borrower who receives a consolidation loan may not repay the consolidation loan with a subsequent consolidation loan unless the borrower receives eligible loans after the consolidation loan is made. However, under section 428C(a)(3)(B)(i)(V) a borrower may consolidate a FFEL consolidation loan into the Direct Loan Program without including an additional loan if the borrower is consolidating for the purpose of—

- obtaining an income-contingent or income-based repayment plan, and the FFEL consolidation loan is in default or has been submitted to the guaranty agency for default aversion;
- using the Public Service Loan Forgiveness program under section 455(m) of the HEA; or
- using the no accrual of interest benefit for active duty service members under section 455(o) of the HEA.

Section 428C(a)(3)(A)(i) of the HEA provides that for the purpose of receiving a Federal Consolidation Loan, the term ''eligible borrower'' means a borrower who is not subject to a judgment secured through litigation with respect to a loan under title IV of the HEA or to an order for wage garnishment under section 488A of the HEA.

Current Regulations: Current § 685.220(d)(1)(i) provides that to obtain a Direct Consolidation Loan, a borrower must either have an outstanding balance on a Direct Loan or have an outstanding balance on a FFEL Program loan. If a borrower does not have an outstanding balance on a Direct Loan but has an outstanding balance on a FFEL Program loan, current § 685.220(d)(1)(i)(B) provides that the borrower must:

(1) be unable to obtain a FFEL consolidation loan;

(2) be unable to obtain a FFEL consolidation loan with income-sensitive repayment terms acceptable to the borrower;

(3) wish to use the Public Service Loan Forgiveness Program or the no accrual of interest benefit for active duty service members;

(4) have a FFEL consolidation loan that is in default or that has been submitted to the guaranty agency for default aversion and want to consolidate the FFEL consolidation loan into the Direct Loan Program to obtain an income contingent repayment plan or an income-based repayment plan; or

(5) have a FFEL consolidation loan and want to consolidate that loan into the Direct Loan Program for the purpose of using the Public Service Loan Forgiveness Program or the no accrual of interest benefit for active duty service members.

Current § 685.220(d)(1)(ii)(E) and (F) provide that at the time a borrower applies for a Direct Consolidation Loan, the borrower must not be subject to a judgment secured through litigation, unless the judgment has been vacated or to an order for wage garnishment under section 488A of the HEA, unless the order has been lifted.

Current § 685.220(d)(1)(iii)(A) and (B) provide that on the loans being consolidated into a Direct Consolidation Loan, the borrower must not be subject to a judgment secured through litigation, unless the judgment has been vacated, or subject to an order for wage garnishment under section 488A of the HEA, unless the order has been lifted.

Current § 685.220(d)(1)(iv) provides that to obtain a Direct Consolidation Loan, a borrower must certify that no other application to obtain a consolidation loan is pending with another lender.

Current § 685.220(d)(2) states that a borrower may not consolidate a Direct Consolidation Loan into a new Direct Consolidation Loan unless at least one additional eligible loan is included in the consolidation.

Current § 685.220(f)(1)(iii) provides that if a borrower consolidates a FFEL or Direct Loan program loan that is in default, the Secretary limits collection charges to the borrower to no more than the costs authorized under the FFEL Program.

Proposed Regulations: The proposed regulations would remove the provisions in current § 685.220(d)(1)(i)(B)(*1*), (*2*) and (*3*) that allow a borrower who has FFEL Program loans, but no Direct Loans, to obtain a Direct Consolidation Loan only if the borrower is unable to obtain a FFEL consolidation loan, is unable to obtain a FFEL consolidation loan with income-sensitive repayment terms that are acceptable to the borrower, or if the borrower wishes to use the Public Service Loan Forgiveness Program or the no accrual of interest benefit for active duty service members. Current § 685.220(d)(1)(i) would be revised to simply state that a borrower must consolidate at least one Direct Loan Program or FFEL Program loan to obtain a Direct Consolidation Loan.

Reasons: Because the SAFRA Act ended the making of new FFEL Program loans (including FFEL Consolidation Loans) as of July 1, 2010, the current restrictions on consolidation into the Direct Loan Program for borrowers who have only FFEL Program loans are no longer relevant and can be removed from the regulations.

Proposed Regulations: The provisions in current § 685.220(d)(1)(i)(B)(*4*) and (*5*) related to the conditions under which a borrower may consolidate a single FFEL Consolidation Loan into the Direct Loan Program would be moved to proposed revised § 685.220(d)(2).

Reasons: For greater clarity, the proposed regulations would incorporate all regulations governing the consolidation of an existing consolidation loan in the same paragraph.

Proposed Regulations: Current § 685.220(d)(1)(ii) would be revised to incorporate the requirements currently in § 685.220(d)(1)(iii) that, on the loans being consolidated, a borrower must not be subject to a judgment secured through litigation or to an order for wage garnishment. Current § 685.220(d)(1)(iii) would be removed.

Reasons: Some of the non-Federal negotiators noted that current § 685.220(d)(1)(ii) is ambiguous and could be read to suggest that a borrower would be ineligible to receive a Direct Consolidation Loan if, at the time the borrower applies for a consolidation loan, the borrower is subject to a judgment or to an order for wage garnishment for any reason, even if it is unrelated to any of the loans that the borrower wishes to consolidate. These negotiators did not believe that this was the intent of the regulations. Rather, the negotiators believed that these limitations should apply only to judgments or orders for wage garnishment that are related to the loans being consolidated, and only at the time of consolidation. They noted that there are separate provisions in current § 685.220(d)(1)(iii) stating that a borrower is not eligible for a Direct Consolidation Loan if the borrower is subject to a judgment secured through litigation or to an order for wage

garnishment under section 488A of the HEA ''on the loans being consolidated,'' unless the judgment has been vacated or the wage garnishment order has been lifted. The Department agreed with the non-Federal negotiators. Because proposed revised § 685.220(d)(1)(ii) would incorporate the provisions that are currently in § 685.220(d)(1)(iii), current § 685.220(d)(1)(iii) would no longer be needed.

Proposed Regulations: Current § 685.220(d)(1)(iv), which requires a Direct Consolidation Loan applicant to certify that no other application to consolidate the borrower's loans with another lender is pending, would be removed.

Reasons: This regulation is no longer needed because, as a result of the SAFRA Act, FFEL Program lenders are no longer authorized to make consolidation loans, and a borrower cannot have more than one application for a Direct Consolidation Loan.

Proposed Regulations: Current § 685.220(d)(2) states that a borrower may not consolidate a Direct Consolidation Loan into a new consolidation loan unless at least one additional loan is included in the consolidation. We would revise this section to provide that the same limitation applies to a borrower who wishes to consolidate a FFEL Consolidation Loan into a new Direct Consolidation Loan. The section would also be expanded to incorporate provisions currently in §§ 685.220(d)(1)(i)(B)(*4*) and (*5*) that allow a borrower, under certain conditions, to consolidate a single FFEL consolidation loan into the Direct Loan Program without including an additional eligible loan in the consolidation.

Reasons: For greater clarity, all rules governing the conditions under which an existing consolidation loan may be consolidated into a new Direct Consolidation Loan would be placed in the same section of the regulations.

Proposed Regulations: Current § 685.220(f)(1)(iii) would be revised to provide that if a borrower consolidates a Direct Loan or FFEL program loan that is in default, the Secretary limits collection costs that may be charged to the borrower to a maximum of 18.5 percent of the outstanding principal and interest amount of the defaulted loan. For any other defaulted Federal education loan, all collection costs that are owed may be charged to the borrower.

Reasons: Some of the non-Federal negotiators asked the Department to expand § 685.220 of the Direct Loan regulations to include some of the disclosure provisions that apply under § 682.205(i) of the FFEL Program regulations to lenders that made FFEL Consolidation Loans. In particular, these negotiators asked the Department to include the provision in current § 682.205(i)(7), which requires a lender to inform a borrower that applying for a consolidation loan does not obligate the borrower to accept it, and to explain the process and deadline by which the borrower may cancel the consolidation loan. The negotiators noted that these requirements are in the HEA and also apply in the Direct Loan Program. These non-Federal negotiators also recommended that the Department revise current § 685.220(f)(1)(iii) to specify the actual maximum amount of collection costs that may be charged to a borrower who consolidates a defaulted Direct Loan or FFEL program loan.

The Department declined to expand § 685.220 to include the consolidation disclosure provisions that are in current § 682.205(i) of the FFEL Program regulations. The FFEL Program regulations govern the activities of third parties; the Direct Loan Program regulations in this area would govern the Department. In general, the Secretary does not issue regulations to control the Department's activities. Moreover, the disclosures discussed by the negotiators are already provided by the Department in the Direct Consolidation Loan Application and Promissory Note that a borrower must complete before receiving a Direct Consolidation Loan. The promissory note explains that before the Department pays off the loans the borrower has selected for consolidation, the Department will send the borrower a notice that provides information about the loans and payoff amounts that have been verified, and tells the borrower the deadline by which the Department must be notified if the borrower wants to cancel the consolidation loan. The notice also specifies the timeframe during which the borrower may cancel the entire consolidation loan or notify the Department that he or she does not want to consolidate one or more of the loans listed in the notice that is sent to the borrower.

However, the Department agreed that for greater clarity, current § 685.220(f)(1)(iii) should be revised to include the specific maximum amount of collection costs that may be charged to a borrower who consolidates a defaulted loan. The Department noted that the 18.5 percent limit on the amount of collection costs that may be charged to a borrower is also included on the Direct Consolidation Loan Application and Promissory Note.

Modification of Direct Loan Program Regulations: Counseling Borrowers (34 CFR 685.304)

Statute: Section 485(b) of the HEA requires that schools provide FFEL and Direct Loan program borrowers (except for consolidation loan borrowers and parent PLUS loan borrowers) with exit counseling prior to the borrower's completion of his or her course of study at the school or at the time of the borrower's departure from a school. This section of the HEA also specifies the information that must be included in the exit counseling. Exit counseling may be provided through a school's financial aid office or by other means. Section 485(b)(2)(C) allows for exit counseling to be provided electronically.

Current Regulations: For the Direct Loan Program, current § 685.304(b)(1) requires a school to ensure that exit counseling is conducted with each borrower of a Direct Subsidized Loan or a Direct Unsubsidized Loan and with any graduate or professional student Direct PLUS Loan borrower shortly before the borrower ceases at least half-time study at the school.

Current § 685.304(b)(2) provides that exit counseling must be in person, by audiovisual presentation, or by interactive electronic means.

Current § 685.304(b)(3) states that if a borrower withdraws from school without the school's knowledge or fails to complete required exit counseling, exit counseling must be provided either through interactive electronic means or by mailing written counseling materials to the borrower at the borrower's last known address. The school must provide the counseling materials to the borrower within 30 days after the school learns that the student has withdrawn or failed to complete exit counseling.

Current § 685.304(b)(4) specifies the information that must be included in exit counseling.

Proposed Regulations: We propose to revise current § 685.304(b)(3) to include another option for providing exit counseling to a student borrower who withdraws without the school's knowledge or fails to complete required exit counseling. Under proposed § 685.304(b)(3), a school could send written counseling materials to an email address provided by the student borrower.

The proposed regulations would also add a new § 685.304(b)(8)(i). For students who have received both FFEL and Direct Loan program loans for attendance at a school, the school's compliance with the Direct Loan Program exit counseling requirements in

§ 685.304(b) satisfies the FFEL Program exit counseling requirements in proposed redesignated § 682.604(a), if the school ensures that the exit counseling includes the information related to a borrower's FFEL indebtedness as described in proposed § 682.604(a)(2)(i) and (ii).

Finally, proposed § 685.304(b)(8)(ii) would state that a student's completion of electronic interactive exit counseling offered by the Secretary satisfies the Direct Loan exit counseling requirements in § 685.304(b) and, for students who have also received FFEL Program loans for attendance at the school, the FFEL Program exit counseling requirements in proposed § 682.604(a).

Reasons: The proposed revision of § 685.304(b)(3) reflects the Department's existing guidance to schools included in the Department's Federal Student Aid Handbook. Similarly, proposed new § 685.304(b)(8)(i) and (ii) would incorporate guidance that the Department has previously provided in response to questions from schools about options for providing exit counseling to borrowers who have received loans through both the FFEL and Direct Loan programs for attendance at the same school. Because the Direct Loan and FFEL exit counseling requirements are generally the same, the Department has previously allowed schools to use a single exit counseling session to satisfy the exit counseling requirements for these students, provided that the counseling includes the separate loan debt information for the loans made under each program. The Department has also previously advised schools that the optional interactive electronic exit counseling offered by the Secretary satisfies the exit counseling requirements for borrowers who have received only Direct Loans or who have received both Direct Loans and FFEL Program loans.

Regulatory Impact Analysis

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

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

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

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

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

This proposed regulatory action raises novel policy issues relating to the Department's efforts in support of the President's initiative to increase college attendance and completion. Therefore, this proposed action is subject to review by OMB under section 3(f) of Executive Order 12866.

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

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

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

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

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

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

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

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

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

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

Elsewhere in this section under the heading *Paperwork Reduction Act of 1995,* we identify and explain burdens specifically associated with information collection requirements.

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.

The Need for Regulatory Action

The Department is responsible for administering the Federal student loan programs authorized by title IV of the HEA. Federal student loans are a crucial element in providing important opportunities for Americans seeking to expand their skills and earn postsecondary degrees and certificates.

With these proposed regulations, the Department seeks to clarify the rehabilitation process for borrowers with defaulted student loans. The Department is addressing concerns raised by advocates and borrowers about that rehabilitation process. The Department wants to ensure that borrowers who wish to rehabilitate their defaulted loans are properly informed about their rights to ''reasonable and affordable'' payments and how a reasonable and affordable payment is determined.

In addition to the changes made to improve program administration, statutory revisions or administration priorities sometimes require the Department to revise its policies and regulations.

In the case of these regulations, the passage of the SAFRA Act ended the origination of new loans under the FFEL Program. Now, new Federal subsidized and unsubsidized student loans and PLUS loans are made through the Direct Loan Program. The Department therefore also seeks to remove regulations governing the FFEL Program that are no longer needed and to make the Direct Loan Program regulations comprehensive. Finally, the Department seeks to add consistency and clarity to all regulations governing student loans.

Beyond those details, Executive Order 12866 emphasizes that ''Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people.'' In this case, there is indeed a compelling public need for regulation.

The Secretary recognizes the growth in the number of students enrolled in college and the resulting increased need for student loans. The Secretary's goal in regulating is to promote viable Federal student loan programs by ensuring that the regulations that govern the origination and servicing of student loans are clear and concise so that borrowers can make informed decisions about borrowing and repayment.

Current regulations allow a borrower with defaulted student loans to rehabilitate those loans by making 9 full, on-time payments (within 20 days of the due date) over a 10-month period in an amount agreed to by the borrower and the loan holder (the Department for a defaulted Direct Loan, a guaranty agency or the Department for a defaulted FFEL Program loan). These regulations provide that the payment amount required by the guaranty agency and the Secretary must be reasonable and affordable. However, there have been complaints that guaranty agencies, the Department, and the debt collection agencies that collect Federal student loans require payments that exceed this standard.

During the negotiated rulemaking sessions, non-Federal negotiators representing consumer advocacy groups expressed concern that the payments requested by the collection agencies often are not reasonable and affordable and that borrowers are not informed of their right to object to these requested payment amounts. They stated that, as a result, many borrowers attempt to rehabilitate their loans but are unable to do so because the payments are too high or because they are discouraged by the process. Similar complaints have been made regularly to the Department at public hearings and other venues.

Under current practices, many collection agencies first try to get the defaulted borrower to pay the total amount of the defaulted debt because by law, the full amount of the loan is due and payable at the time of default. If a borrower is unable to pay the full amount, collection agencies then attempt to negotiate a payment with the borrower that is as close to the 10-year standard payment amount as the borrower can afford to pay. These amounts are generally based on the borrower's income and expenses. This approach assumes that borrowers who pay an amount comparable to the 10-year standard will have an easier transition into regular payments after rehabilitating their loans. Generally, for collection agencies to receive a commission on successful loan rehabilitation, the total amount collected must be equivalent to a certain percentage of the total loan amount owed.

While defaulters represent a small portion of the total borrower population, the number of defaults has been on the rise.[1] The Department has sought to reduce the number of defaulters by improving borrowers' payment management options through the implementation of the President's Pay As You Earn initiative and other changes to the Federal student loan programs. The changes to the loan rehabilitation process included in this NPRM are another part of this overall effort. Even with these efforts, the Department cannot gauge whether or not the default rate will increase, decrease, or remain steady.

Some defaulted borrowers who may be interested in rehabilitating their defaulted loans are also subject to AWG. Those borrowers may be discouraged from trying to fully rehabilitate their loans because they fear that they will not be able to make loan payments in addition to the amount garnished. Through the proposed regulations, the Department aims to add clarity to the AWG process so that affected borrowers will understand what is required for AWG to be suspended.

While defaulted borrowers are subject to immediate collection of their total loan debt, the Secretary believes that providing them with an improved process to rehabilitate the defaulted loan is in the best interests of the taxpayers and the borrower. Defaulted borrowers continue to accrue interest on the debt and are charged collection costs. In addition, the default harms their credit scores, and the borrowers may have trouble purchasing homes or obtaining auto loans or other types of consumer credit. By improving the opportunities for defaulted borrowers to rehabilitate their student loans, the Department will not only improve its chances for full collection of the debt but also help some defaulted borrowers return to full economic participation.

The Secretary is also proposing other changes to the FFEL and Direct Loan program regulations. The elimination of new loan originations in the FFEL Program means that many of the current FFEL Program regulations are no longer necessary. In addition, this change presented the Secretary with an opportunity to improve consistency across the FFEL, Direct and Perkins loan programs. Currently the different Title IV loan programs are regulated and administered differently in areas where they could be consistent. The Secretary is proposing to eliminate these differences where appropriate.

The Secretary proposes to revise the Direct Loan regulations to incorporate provisions from the FFEL regulations that are currently only cross-referenced in the Direct Loan regulations. By incorporating the substantive provisions in the Direct Loan regulations instead of simply cross-referencing to the FFEL regulations, the Direct Loan regulations will be comprehensive. This step is appropriate since the Direct Loan Program is now the predominant Federal student loan program.

By proposing revisions to the regulations, the Secretary aims to provide clarity and transparency to the administration of the loans programs. Over the years there have been consistent concerns that borrowers are unable to properly manage their Federal student loans because of confusion over their rights and options. This is particularly true for borrowers who are delinquent on their loans and borrowers who experience personal hardship. The revised regulations would clarify the rules for borrowers and provide them with a better understanding of their rights and responsibilities. Also, the revised rules would provide better and clearer guidance to lenders and guaranty agencies about their roles and responsibilities in servicing Federal student loans.

[1] U.S. Department of Education, First Official Three-Year Student Loan Default Rates published, September 28, 2012, *www.ed.gov/news/press-releases/first-official-three-year-student-loan-default-rates-published.*

Discussion of Costs, Benefits and Transfers

Adding clarity to the loan rehabilitation process offers many benefits. The Department believes that rehabilitation offers benefits for students, the Department, and the Nation. Defaulted borrowers may be more willing to complete the rehabilitation process. Defaulted borrowers may see significant improvements in their credit scores and purchasing power. As these borrowers become bigger participants in the economy, an improved rehabilitation process should support positive growth.

Improved loan rehabilitation rates will also allow the Department and collection agencies to concentrate their collection efforts on non-paying borrowers. In general, the more student loan accounts that are active and current, the better for the programs. The Department believes these proposed regulatory changes will help ensure that the Federal student loan programs remain strong and support maximum access to higher education for American students.

Over the past decade, the Department has steadily increased the number of loans it rehabilitates annually. As Chart 1 shows, in FY 2001 the Department and guaranty agencies rehabilitated just over $223 million in defaulted Federal student loan debt. By FY 2011, this number had jumped to $5 billion. The Department and guaranty agencies also recovered $12 billion worth of defaulted loan debt in FY 2011 compared to $5 billion in FY 2001. Part of the increase in loan rehabilitation can be linked to growing enrollment, rising tuition, and two economic slowdowns, which led to more borrowing. However, the higher percentage of total collections that comes from loan rehabilitation shows that the Department and guaranty agencies are working with borrowers to help them take advantage of the opportunity for loan rehabilitation.

[$mns]

	2001	2005	2008	2009	2010	2011
Total Rehabilitations	224	1,606	3,722	3,504	4,332	5,165
Total Collections	5,124	5,809	8,580	8,820	10,214	12,006
Rehabilitations as % of Collections	4.4%	27.6%	43.4%	39.7%	42.4%	43.0%

Even though the proposed regulations could possibly result in lower payment amounts for borrowers while they are rehabilitating their defaulted loans, the borrowers would still be responsible for ultimately paying their entire debt. Furthermore, even if rehabilitation payments are lowered on average across the board, the Department believes that the overall benefits of having more borrowers current in their debt payments will outweigh any short-term cost of reduced payments.

Overall, the true monetary effect of the proposed regulations would depend heavily on various factors. The Department is currently implementing changes to its income driven repayment options and expects these changes to help slow down a rising default rate by offering improved payment management options to borrowers. Also, as the economy continues to improve, the default rate may drop as more borrowers find employment.

The proposed regulations would provide many additional benefits to borrowers and promote a more efficient and transparent Federal student loan program.

By expanding from 90 to 120 days the window during which a borrower may qualify for a closed school loan discharge after withdrawing from a school that eventually closes, the number of borrowers who qualify for the discharge may increase. However, school closures are a relatively rare occurrence. In 2007, 43 Title IV participating schools closed. This number dropped to 30 in 2008 and to 18 in 2011. Unlike two decades ago, when fraudulent institutions would quickly shut their doors without any notification to students or regulators, most closures these days are due to a loss of accreditation. In most cases, students who attend schools that lose accreditation are given ample warning about a possible closure and can make educated decisions about continuing their programs beforehand. While the extended window may mean that more borrowers qualify under the proposed closed school regulations, we do not believe it will present a significant cost. In 2011, 214 borrowers received closed school loan discharges for loans valued at approximately $870,000. This was an increase from the 2010 numbers of 50 borrowers with a loan value of $467,000 but still represents a very small portion of the student loan portfolio.

The proposed revisions to the forbearance process in the different loan programs will offer many benefits to borrowers. By expanding the circumstances in which lenders may grant administrative forbearance, borrowers who had difficulty making payments but who are trying to rectify the situation, will receive relief. The regulations would give the Department and FFEL lenders more flexibility in dealing with defaulted borrowers. These revisions would also clarify the eligibility for forbearance and promote a more transparent loan program.

The proposed revisions to § 685.301 would offer benefits for certain borrowers in non-traditional programs. Under the proposed regulations, students who transfer from one school into non-term or certain standard non-term programs at a different school during the middle of an academic year would initially be eligible for a Direct Loan to cover the remainder of the academic year that began at the prior school (up to their remaining eligibility under the annual loan limits), regardless of whether the new school accepts credits from the prior school. The current regulation only allows this result if the new school accepts transfer credits from the prior school.

Eligible borrowers would also be able to receive an initial loan at the new school for an amount up to the difference between the annual loan limit and the amount received at the prior school, with a loan period covering the remainder of the academic year that began at the prior school, followed by a second loan for up to the full annual loan limit for the next academic year at the new school. Under the current regulations, if the new school does not accept transfer credits from the prior school, the initial loan at the new school must be for the lesser of a full academic year or for the remainder of the program at the new school. The maximum loan amount the student may receive for that entire period is the difference between the annual loan limit and the loan amount received at the prior school. While the ability of these transfer students to receive additional loan funds will result in a cost to the

government, the Department believes it will be minimal since these borrowers will repay those loans.

Borrowers would see other benefits under the proposed regulations as well. The proposed revisions to the Administrative Wage Garnishment (AWG) hearing process would ensure that borrowers have a better understanding of their rights and responsibilities in that process and ensure that borrowers are treated consistently by guaranty agencies and the Department.

Overall, the proposed regulations would strengthen the Federal student loan programs and help support the American postsecondary education system. As more and more students now depend on student loans to pay for their college education, it is essential that borrowers fully understand the rights and responsibilities that are a part of their student loan obligations. It is also essential that the student loan programs operate as efficiently as possible. These revisions are part of the Department's commitment to running efficient loan programs that support more than ten million students per year. This number will grow as the country pursues the President's 2020 goal of leading the world in college degree attainment. Keeping a strong higher education system will be essential to America maintaining its economic advantage in the world.

Net Budget Impacts

The regulations are estimated to have a net budget impact of $2.8 to $3.4 million over ten years from 2013–2022 driven by the expansion of the time period for eligibility for a closed school discharge. Consistent with the requirements of the Credit Reform Act of 1990, budget cost estimates for the student loan programs reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans. A cohort reflects all loans originated in a given fiscal year.

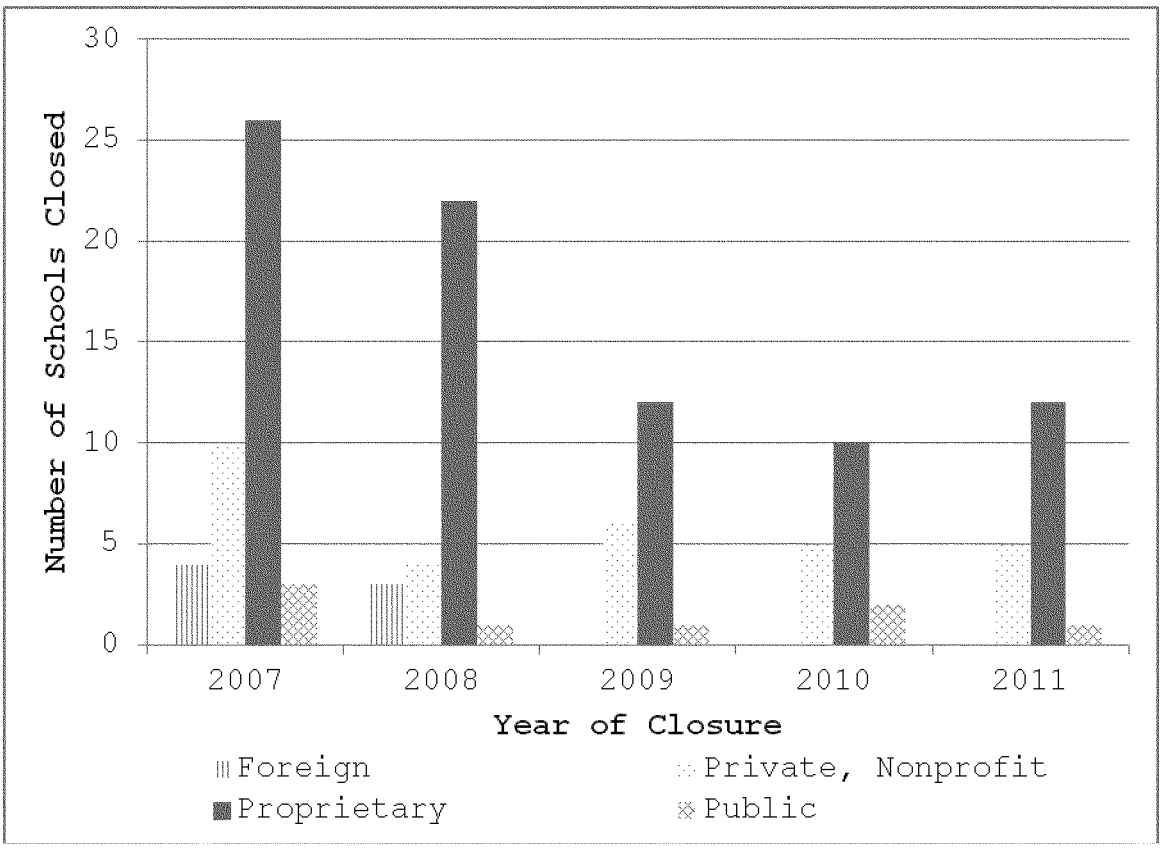
In general, these estimates were developed using the Office of Management and Budget's (OMB's) credit subsidy calculator. The calculator takes projected future cash flows from the Department's student loan cost estimation model and produces discounted subsidy rates reflecting the net present value of all future Federal costs associated with awards made in a given fiscal year. Values are calculated using a ''basket of zeros'' methodology under which each cash flow is discounted using the interest rate of a zero-coupon Treasury bond with the same maturity as that cash flow. To ensure comparability across programs, this methodology is incorporated into the calculator and used Government wide to develop estimates of the Federal cost of credit programs. Accordingly, the Department believes it is the appropriate methodology to use in developing estimates for these regulations. That said, in developing the following Accounting Statement, the Department consulted with OMB on how to integrate our discounting methodology with the discounting methodology traditionally used in developing regulatory impact analyses.

Absent evidence of the effect of these regulations on student behavior, budget cost estimates were based on behavior as reflected in various Department data sets and longitudinal surveys listed under *Assumptions, Limitations, and Data Sources.* Program cost estimates were generated by running projected cash flows related to each provision through the Department's student loan cost estimation model. Student loan cost estimates are developed across five risk categories: Students at less than four-year for-profit institutions, students at less than four-year public and non-profit institutions, freshmen/sophomores at four-year institutions, juniors/seniors at four-year institutions, and graduate students. Risk categories have separate assumptions based on the historical pattern of behavior—for example, the likelihood of default or the likelihood to use statutory deferment or discharge benefits—of borrowers in each category.

Closed School Discharge

Under current regulations §§ 674.33, 682.404, and 685.214, student borrowers may qualify for a loan discharge if they are unable to complete a program of study because a school closes or if they withdraw no more than 90 days before school closure. The Secretary could extend the 90-day window based on exceptional circumstances. The proposed regulations would extend the 90-day period to a 120-day period and provide examples of what qualifies as an exceptional circumstance. We estimate these changes to have a cost of approximately $3.1 million over 10 years as the pool of borrowers eligible for discharge will increase. The costs are limited by the small number of closed schools, the availability of teach-outs, and the assignment of recoveries to the Department. Chart 2 shows the 128 closed schools since 2007 by year and institutional category.

Chart 2: Annual School Closures by Institutional Control



Source: U.S. Department of Education

Since 2007, closed school discharges totaling $5.9 million have been granted to approximately 1,600 borrowers, representing approximately 3.4 percent of borrowers estimated to be eligible for discharge under the existing 90-day window. Some borrowers did not receive a discharge because the institution arranged a teach-out or students completed their educational program with credit for the work at the closed school. By extending the window to 120 days, the Department estimates that an additional 100 students would receive closed school discharges totaling approximately $400,000 annually.

This projected amount was determined by estimating that the almost 1,600 borrowers with discharges over five years were evenly distributed, resulting in approximately 320 borrowers with closed school discharges annually. The Department then assumed that extending the window to 120 days would increase the number of borrowers receiving discharges by about a third since some students would already have qualified under the 90-day window and we are adding 30 days, about a third of the original 90-day window. As the discharge amounts involved are small, no subsidy impact is estimated. On a cash basis, the estimated budget impact of expanding closed school discharge is $2.8 to $3.4 million over 10 years when discounted at 7 percent or 3 percent. The Department welcomes comments about these assumptions and estimates and will consider them in drafting the final rule.

Loan Rehabilitation

Two areas related to loan rehabilitation affected by the proposed regulations are the determination of the reasonable and affordable payment for loan rehabilitation and the limitations on the use of administrative wage garnishment while a borrower is attempting to rehabilitate a defaulted loan. While the proposed regulatory changes in both areas would change the period of time and sources of payments the Department receives, the Department does not estimate that the proposed regulations would have any significant budget impact.

The proposed regulations refine the process for determining the reasonable and affordable payment for loan rehabilitation to improve consistency across loan programs. The current regulations for the FFEL Program require guaranty agencies and their collection agents to negotiate a reasonable and affordable payment for loan rehabilitation with the borrower that takes into account all of the borrower's financial circumstances. The Direct Loan Program currently does not have similar regulatory language describing how the Department determines a reasonable and affordable payment amount, but the program does have a similar process for receiving income and expense information and negotiating a payment with the borrower.

Borrower advocates have claimed that this process results in inconsistent treatment across guaranty agencies and payments that may not be reasonable and affordable for borrowers. Borrower advocates have suggested that the Department require the use of the IBR formula to establish the reasonable and affordable payment for loan rehabilitation to improve consistency and potentially reduce the borrower's rehabilitation payment amount. Guaranty agencies and the Department wanted to preserve the flexibility to work with borrowers, but agreed to have

the IBR formula as a second option if the borrower objected to the reasonable and affordable payment initially determined by the Department or the guaranty agency. The Department and several negotiators agreed to the use of the IBR formula with the caveat that an IBR formula calculation of $0 would result in a monthly rehabilitation payment of $5 (not $0), since a key part of the rehabilitation process is getting borrowers in the habit of making payments. Additionally, to make the Direct Loan Program regulations more comprehensive and informative for borrowers, the Department agreed to incorporate the regulations governing the determination of a reasonable and affordable payment amount into the Direct Loan Program regulations.

With approximately $1.49 billion in defaulted loan balances rehabilitated by the Department in FY 2011, loan rehabilitation is a valuable collections tool that also allows borrowers to improve their credit history and regain eligibility for title IV, HEA Federal student aid. The Department and guaranty agencies have emphasized keeping the rehabilitation payment amount close to the payment the borrower will have to make following rehabilitation to avoid sharp increases in the required payment. The availability of IBR or ICR payment plans after rehabilitation expands the range of payments possible during rehabilitation that would be in line with post-rehabilitation payments. This new standard may also help decrease the number of rehabilitation borrowers who re-default, as their required rehabilitation plan payment amount will be very similar to the payment amount they will make when they return to regular repayment. The proposed regulations would retain the current FFEL Program regulations requiring consideration of the borrower's income and expenses while clarifying the types of incomes and expenses to consider, require the use of a standardized form, and allow borrowers to object to the payment determined based on the individual's income and expenses and included in the written rehabilitation agreement offered to the borrower. A borrower who objected to the amount required under that method would be able to obtain an alternative amount determined using the IBR formula. A borrower could choose between the two proposed payment amounts. As the negotiation process and factors considered in determining the reasonable and affordable payments will largely remain the same for FFEL Program loans, the Department does not estimate a budget impact from the proposed changes.

With respect to the Direct Loan portfolio, the Department would be required to consider the same income and expense factors, with the same possibility of the IBR formula as a fallback calculation for borrowers who object to the first payment amount that the Department offers to the borrower. For individual borrowers, the payment offered as an alternative rehabilitation amount based on IBR might be less than what the Department would determine to be appropriate based on an assessment of the borrower's income and expenses. If this is the case, the Department would collect less money during the months the borrower attempts loan rehabilitation, but the borrower would still owe the remaining balance after rehabilitation. In addition, to the extent lower payments encourage borrowers to complete a loan rehabilitation and continue payments they otherwise would not make, the proposed regulations may increase total payments over the life of the loan for some borrowers. The likelihood of borrowers paying less, the same, or more over the life of a loan over time as a result of the proposed changes in defining a reasonable and affordable payment is uncertain, but the Department does not expect it to have an appreciable budget impact.

Perkins Loans Provisions

The proposed regulations address a few areas related to the Perkins Loan Program including: Revising cancellation progression rates; modifying the treatment of health-related breaks in service for certain loan cancellations; making the eligibility for a graduate fellowship deferment consistent with FFEL and Direct Loan program criteria; making a technical correction to eliminate the debt-to-income economic hardship deferment category for borrowers working less than full-time; defining ''on-time'' for rehabilitation payments; and allowing assignment to the Department of Perkins Loans made before September 13, 1982, without the borrower's SSN. The Department does not estimate a significant budget impact from these provisions. No appropriations have been made to support the Perkins Loan Program since 2008, and institutions make loans from payments made on their portfolios of existing loans. The effect on the Federal budget of increased costs in the Perkins Loan Program is a possible reduction of Federal Perkins assets available to be recalled in future years.

The technical changes to make the debt-to-income economic hardship deferment, graduate deferment eligibility, and on-time payment standard for rehabilitation payments in the Perkins Loan Program more consistent with the FFEL and Direct Loan programs are not expected to have any budget impact. Students with graduate fellowships are already eligible for deferments in the Perkins Loan Program, and the Department estimates that aligning the definition of a graduate fellowship in the Perkins Loan Program with that used in the FFEL and Direct Loan programs will not expand the pool of graduate fellows allowed a deferment. For the on-time payments standards for loan rehabilitation purposes, the Perkins Loan Program does not currently have a regulatory standard, but the discretion institutions have in setting their own standard is constrained by the requirement that nine monthly payments be made for rehabilitation.

The slight changes in timing associated with defining the on-time payment standard at 20 days is not expected to change the number of borrowers successfully rehabilitating their Perkins loans or the ultimate amount collected from those borrowers, so no budget impact is expected. The ability to assign loans to the Department without the borrower's SSN may facilitate some institutions leaving the program and, if the Department is able to collect on those loans, result in some small additional revenues.

As shown in Table 1, the proposed regulations related to Perkins Loan cancellation do involve some substantial cancellation amounts (e.g. Teacher Service), but the limited scope of the changes and the reduction of Federal funding in the Perkins Loan Program limits the net budget impact on the Federal government.

TABLE 1—PERKINS LOAN CANCELLATIONS BY CANCELLATION TYPE

[IN $mn]

Cancellation type	2007	2008	2009	2010	2011	Grand total
Nurse/Medical Tech	26.3	29.6	32.9	35.2	33.7	157.6

TABLE 1—PERKINS LOAN CANCELLATIONS BY CANCELLATION TYPE—Continued

[IN $mn]

Cancellation type	2007	2008	2009	2010	2011	Grand total
Teacher Service	20.4	21.1	21.4	22.4	19.9	105.3
Teaching in Teacher Shortage Field	5.8	5.5	5.6	5.8	5.0	27.6
Law Enforcement	4.4	4.4	4.8	5.4	5.7	24.6
Early Intervention	4.4	4.2	4.1	4.5	4.1	21.2
Volunteer Service	3.0	3.1	3.4	3.5	3.7	16.7
Death, Disability, and Bankruptcy	2.8	3.1	3.2	2.9	2.9	14.8
Defense Teacher/Military prior to 1972	0.2	0.1	0.1	0.1	0.0	0.5
Military Service	0.1	0.1	0.1	0.1	0.1	0.5
Speech Pathologist			0.0	0.1	0.2	0.4
Firefighter				0.1	0.1	0.2
Librarian			0.0	0.0	0.1	0.1
Other	0.00	0.02	0.0	0.01	0.01	0.1
Tribal College				0.0	0.0	0.0
Total	67.4	71.1	75.5	80.0	75.4	369.5

Source: NSLDS.

As detailed in the *Summary of Proposed Regulations* section of this preamble, proposed § 674.52(g)(1) would change the Department's longstanding policy that switching cancellation categories results in a borrower falling back to the first-year cancellation rate. Instead, the proposed regulations would allow borrowers who switch between cancellation categories with the same rate of progression to continue the progression from the last year under the prior category; however, the borrower would fall back to the first-year cancellation rate if the borrower switches to a category with a different progression rate.

The three Perkins Loan cancellation progression rates are summarized in Table 2, and all categories except early childhood education, Peace Corps volunteer, or voluntary service have a 15/15/20/20/30 percent cancellation progression. After a Perkins Loan borrower receives cancellations for five years at these rates, 100 percent of the original principal balance of the borrower's loan is canceled. While some borrowers may be able to accelerate their cancellation or achieve full cancellation, the nature of the categories affected by the policy change would limit the likelihood of borrowers switching between them. To the extent a small number of borrowers do switch and are allowed to maintain their progression rate instead of falling back to year one, the primary effect would be on the timing of cancellation received, not the amount.

TABLE 2—PERKINS LOAN CANCELLATION PROGRESSION RATES

Firefighter, Law Enforcement, Teacher, Teacher in Shortage Area, Librarian, Military Service, Defense Teacher/Military prior to 1972, Nurse/Medical Tech, Speech Pathologist, Early intervention, and Tribal College.	§ 674.53, § 674.56, § 674.57, § 674.59.	15%	15%	20%	20%	30%	100%.
Early Childhood Education	§ 674.58	15% for each year of service; Up to 100% can be cancelled if service extends to 7 years					up to 100%.
Peace Corps or Volunteer Service	§ 674.60	15%	15%	20%	20%		70%.

Additionally, proposed § 674.52(c) would replace the current Perkins Loan treatment of a break in teaching service for pregnancy or illness. Currently teachers must complete the first half of the academic year, begin the second half, and have the employer agree that the teacher fulfilled that year of the contract. In the FFEL and Direct Loan programs, if a borrower is unable to complete the second half of the year of teaching for reasons covered by the FMLA, the service could count towards cancellation if the employer agrees the contract has been fulfilled for the year.

The proposed regulations would apply the FMLA-related break-in-service exception to all Perkins Loan cancellation categories, not just teachers. As Perkins loan cancellation does not require consecutive service, the Department expects this provision may allow some borrowers to receive credit for a year that would not otherwise have counted as service and speed up the ultimate cancellation of the loan, but it will not significantly expand the number of borrowers who achieve loan cancellation as their next year of service could qualify instead. These cancellation provisions may affect the timing of when borrowers achieve cancellation, but the Department does not estimate that they will significantly increase the overall amount cancelled.

Additional Provisions

Many of the proposed regulations have no impact on the Federal budget as they reflect statutory changes already incorporated into the budget baseline or clarify existing practices. Several areas of the current regulations that are proposed for removal from the regulations by this NPRM relate to origination and administration of FFEL Program loans. Those regulations became irrelevant when new FFEL Program loan originations ended as of July 1, 2010. Any costs or savings resulting from the end of FFEL Program loan originations were attributed to the SAFRA Act, so there is no estimated

budget impact from these provisions. The budget impact of these changes was already incorporated into the budget baseline.

Updates were also made to the Direct Loan regulations to incorporate specific provisions that previously were included in the Direct Loan regulations by cross-reference to the FFEL regulations. The restructuring of the Direct Loan regulations to remove references to the FFEL Program regulations or to reflect current practices is not estimated to have a budget impact.

Assumptions, Limitations, and Data Sources

In developing these estimates, a wide range of data sources were used, including data from the National Student Loan Data System; operational and financial data from Department of Education systems, including especially the Fiscal Operations Report and Application to Participate (FISAP); and data from a range of surveys conducted by the National Center for Education Statistics, such as the 2008 National Postsecondary Student Aid Survey and the 2004 Beginning Postsecondary Student Survey. Data from other sources, such as the U.S. Census Bureau, were also used.

Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf*), in Table 3, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these regulations. This table provides our best estimate of the changes in Federal student aid payments as a result of these regulations. Expenditures are classified as transfers from the Federal Government to student loan borrowers.

TABLE 3—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES

[in millions]

Category	Benefits	
	7%	3%
Greater consistency between the title IV loan programs.	Not Quantified	
Category	**Costs**	
	7%	3%
Costs of compliance with paperwork requirements	−$93.8	−$94.4
Category	**Transfers**	
	7%	3%
Reduced payments to Federal Government from additional borrowers receiving closed school discharges	$0.40	$0.40

Alternatives Considered

In the spirit of good governance, the Department carefully considers any regulatory action or revision to ensure that the final decision represents what the Department believes is the best feasible option. First and foremost, the Department considered whether or not negotiated rulemaking was necessary in this instance and concluded that the magnitude of the statutory and regulatory revisions to these rules would require stakeholder input. Many of the regulatory alternatives proposed by non-Federal negotiators were ultimately rejected by the Department because of statutory limitations.

For example, some non-Federal negotiators raised questions about the Department's implementation of the statutory requirement that a school must close in order for the borrower to receive a loan discharge. The non-Federal negotiators asked the Department to clarify whether students would be eligible for a closed school discharge in the event an online school closed one of its locations or ceased to operate one of its programs.

In response to the negotiators' questions, the Department noted that, for purposes of the discharge, the terms ''school'' and ''location'' are defined by the HEA. If a school (distance education or traditional) closes one of its programs, a borrower does not qualify for a closed school discharge because the school itself did not close. The entire school has to close for online distance education students to receive a discharge. The Department also noted that, under the regulations, for students attending an online school that operates at many different locations, the main campus or main location of the online school would have to close in order for the online distance education student to receive the discharge. Although this topic engendered much discussion, the provisions governing what constitutes a school and location in the current regulations at §§ 674.33(g), 682.402(d), and 685.214(c) are based on statutory requirements.

The Department proposed amending regulations so that a borrower's reasonable and affordable payment amount for loan rehabilitation would be calculated using the IBR formula. However, there was strong disagreement among the non-Federal negotiators about the merits of this proposal. Negotiators representing guaranty agencies argued that requiring the use of the IBR formula would reduce their ability to work with borrowers to arrive at a rehabilitation payment amount acceptable to both the guaranty agency and to the borrower. Negotiators representing borrower advocacy groups strongly disagreed with the argument that the use of IBR would reduce the agencies' ability to work with borrowers. After careful deliberation, the Department decided to allow guaranty agencies to keep their flexibility in negotiating reasonable and affordable rehabilitation payments, but it ensured that borrowers would be made aware of their right to ask for a recalculation of the payment amount.

The Department considered other smaller proposals and alternatives as discussed in the preamble but believes that these proposed regulations represent the best possible and most feasible outcomes.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum ''Plain Language in Government Writing'' requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§ '' and a numbered heading; for example, § 682.209 Repayment of a loan.)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of the preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section of this preamble.

Regulatory Flexibility Act Certification

Initial Regulatory Flexibility Analysis

These proposed regulations would affect institutions that participate in the title IV, HEA programs, including alternative certification programs not housed at institutions, and individual borrowers. The U.S. Small Business Administration (SBA) Size Standards define for-profit institutions as ''small businesses'' if they are independently owned and operated and not dominant in their field of operation with total annual revenue below $7,000,000. The SBA Size Standards define nonprofit institutions as small organizations if they are independently owned and operated and not dominant in their field of operation, or as small entities if they are institutions controlled by governmental entities with populations below 50,000. The revenues involved in the sector affected by these regulations, and the concentration of ownership of institutions by private owners or public systems means that the number of title IV, HEA eligible institutions that are small entities would be limited but for the fact that the nonprofit entities fit within the definition of a small organization regardless of revenue. Given the definitions above, several of the entities subject to the proposed regulations are small, leading to the preparation of the following Initial Regulatory Flexibility Analysis.

Description of the Reasons That Action by the Agency Is Being Considered

With these proposed regulations, the Department seeks to remove certain regulations governing the FFEL Program that are no longer needed and to revise Direct Loan Program regulations to ensure that they are comprehensive and to add consistency and clarity to all regulations governing student loans by revising where applicable. The Department also seeks to provide clarity to the loan rehabilitation process for borrowers with defaulted student loans by developing clear guidance and regulations.

Succinct Statement of the Objectives of, and Legal Basis for, the Regulations

The proposed regulations amend the FFEL and Direct Loan program regulations to: Reflect changes made to the HEA by the SAFRA Act; incorporate other statutory changes in the Direct Loan Program regulations; update, strengthen, and clarify various areas of the Student Assistance General Provisions, Perkins Loan, FFEL, and Direct Loan program regulations; and provide for greater consistency in the regulations governing title IV, HEA student loan programs.

In addition, On January 21, 2011, President Obama issued Executive Order 13563, ''Improving Regulation and Regulatory Review'' (76 FR 3821). The order requires all Federal agencies to ''consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' Accordingly, on August 22, 2011, the Department issued its Plan for Retrospective Analysis of Existing Regulations. (See *ed.gov/policy/gen/reg/retrospective-analysis/index.html*).

Our plan identified a number of regulatory initiatives for retrospective review and analysis. One of those initiatives was transitioning from the FFEL Program, under which new loans ceased on July 1, 2010, to the Direct Loan Program. This proposed rule would remove obsolete FFEL Program regulations.

Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which the Regulations Will Apply

The proposed regulations would affect several categories of entities involved in the administration and servicing of Federal student loans. Many of the proposed regulations relate to notifications, servicing, or collection activities done by loan servicers or entities acting for the Federal government. The Department does not expect these entities to meet the applicable definition of ''small entity.'' The proposed regulations related to Perkins Loans will affect the institutions that participate in the program, some of which would be classified as small entities. As discussed above, private non-profit institutions that do not dominate in their field are defined as small entities and a few other institutions that participate in the Perkins Loan Program do not have revenues above $7 million and are also categorized as small entities. Table 4 summarizes AY 2010–11 Perkins loan disbursements by institutions that qualify as small entities. Based on the definition of non-profit institutions as small entities, approximately 59 percent of institutions that disbursed Perkins loans in AY2010–11 were small entities.

TABLE 4—AY2010–11 PERKINS LOAN DISBURSEMENT SUMMARY

Perkins Loan Institutions with disbursements	545	874	107	1526
Small entities with Perkins disbursements	2	874	25	901
% of small entities by control	0.4%	100.0%	23.4%	59.0%
Overall Disbursements	387,694,908	448,589,990	20,332,961	856,617,859
% by control	45.26%	52.37%	2.37%	100%
Amounts at Small Entities	53,467	448,589,990	1,012,596	2,808,851

The Secretary invites comments from small entities as to whether they believe the proposed changes would have a significant economic impact on them and, if so, requests evidence to support that belief.

Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements of the Regulations, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

The various provisions in the proposed regulations would modify or increase the paperwork burden on entities participating in the FFEL, Direct Loan, or Perkins Loan programs, as described in the *Paperwork Reduction Act* section of this NPRM. Much of this burden would be associated with borrowers or the Department and its agents and therefore does not affect small entities. Table 5 summarizes the estimated burden on small entities, primarily institutions and guaranty agencies, from the paperwork requirements associated with the proposed regulations. As discussed in the Paperwork Reduction Act section of this NPRM, several of the provisions reduce the estimated burden on institutions, lenders, and guaranty agencies from the elimination of regulatory provisions or changes to requirements and this is reflected by the negative numbers in the table.

Description	OMB Control No.	Small entity hours	Cost($)	Cost per small entity
FFEL forbearance	1845–0020	264	6,497	650
Reasonable and Affordable loan rehab	1845–0020	69,161	1,702,052	154,732
Suspension of AWG for rehab borrowers	1845–0020	1,257	30,935	2,812
School Enrollment Status Reporting	1845–0019	24,342	599,068	54,461
Deferment of repayment—Federal Perkins Loans—definition of eligible graduate fellowship programs	1845–0019	175	4,316	22
AWG 3rd party contractors; hearing requests, and hearing administration	1845–0020	57,568	1,416,748	128,795
Lender disclosure	1845–0020	(20,461)	(503,556)	(50,356)
Due diligence in making a loan	1845–0020	(40,923)	(1,007,112)	(100,711)
Equal credit—removal of provision	1845–0020	(40,923)	(1,007,112)	(100,711)
Eligibility for interest benefits	1845–0020	(40,923)	(1,007,112)	(100,711)
Basic program agreement	1845–0020	(11,174)	(274,982)	(27,498)
Records, reports, inspection requirements for GA programs	1845–0020	(5,587)	(137,495)	(12,500)
Prohibited use of Operating Fund when it contains Federal Fund assets—removal of provision	1845–0020	(111,739)	(2,749,889)	(249,990)
Funds transferred to Operating Fund by a GA—removal of provision	1845–0020	(111,739)	(2,749,889)	(249,990)
FISL loan related—removal of provisions	1845–0020	(163,692)	(4,028,450)	(884.40)
School as lender—removal of provision	1845–0020	(206,534)	(5,082,791)	(1,115.87)
Exit counseling	1845–0020	(134,247)	(3,303,819)	(725.32)
Disqualification review of limitation, suspension, and termination actions taken by GA against a school—removal of provision	1845–0020	(111,739)	(2,749,889)	(249,990)

Identification, to the Extent Practicable, of all Relevant Federal Regulations That May Duplicate, Overlap or Conflict With the Proposed Regulation

The proposed regulations are unlikely to conflict with or duplicate existing Federal regulations.

Alternatives Considered

As described above, the Department participated in negotiated rulemaking in developing the proposed regulations and considered a number of options for some of the provisions. No alternatives were aimed specifically at small entities.

Paperwork Reduction Act of 1995

Sections 674.19, 674.33, 674.34, 682.102, 682.200, 682.205, 682.206, 682.208, 682.209, 682.210, 682.211, 682.212, 682.214, 682.216, 682.301, 682.305, 682.401, 682.402, 682.404, 682.405, 682.406, 682.409, 682.410, 682.411, 682.412, 682.414, 682.417, 682.418, 682.421, 682.507, 682.508, 682.511, 682.515, 682.602, 682.603, 682.604, 682.605, 682.610, 682.711, 682.712, 682.713, 685.205, 685.211, 685.214, contain information collection requirements. Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections, related forms, and Information Collection Requests (ICRs) to the Office of Management and Budget (OMB) for its review.

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the PRA (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Department's 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 Department can properly assess the impact of collection requirements on respondents.

The forms that would be used to collect the information related to these proposed regulations and the ICRs related to the proposed regulations and forms are available for comment on Regulations.gov under the same Docket number as the proposed regulations. We ask that commenters submit a separate set of comments on the paperwork burdens that would be imposed under the proposed regulations and associated forms. The OMB Control numbers associated with the proposed regulations and related forms are 1845–0015, 1845–0019, 1845–0020, 1845–NEW1, and 1845–NEW2.

Please note that the comment period regarding paperwork burden runs concurrently with the comment period for the proposed regulations. We have asked OMB for emergency review because the Department needs to start collecting this information before the start of the next academic year, as soon

as the regulations become final. The comment period for the burden associated with these regulations is 30 days. See the DATES section of this preamble for the deadline to submit PRA comments.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

In the final regulations we will display the control number assigned by OMB to any information collection requirement proposed in this NPRM and adopted in the final regulations.

Sections 682.211 and 685.205—Forbearance

The proposed regulations amend the current FFEL Program regulations to authorize a lender, prior to resolving a default claim payment, to grant forbearance to a borrower or endorser who is in default on a loan based on the borrower's or endorser's oral request. The current regulations require borrowers to submit a written request for forbearance. The burden calculations address only the added burden created by accepting oral requests for forbearance. The proposed regulations provide that a forbearance agreement in this situation must include a new agreement to repay the debt signed by the borrower or endorser (as required under the current regulations), or a written or oral affirmation of the borrower's or endorser's obligation to repay the debt. The proposed regulations define ''affirmation'' for this purpose to be an acknowledgment of the loan by the borrower or endorser in a legally binding manner that can take the form of: (1) A new signed repayment agreement or schedule, or another form of signed agreement to repay the debt (as under current regulations); (2) an oral acknowledgment and agreement to repay the debt that is documented by the lender in the borrower's or endorser's file and confirmed by the lender in a notice to the borrower; or (3) a payment made on the loan by the borrower or endorser. The proposed regulations also specify that if a forbearance in this situation is based on the borrower's or endorser's oral request and affirmation, the lender must orally review with the borrower the terms and conditions of the forbearance. The lender must also send the borrower or endorser a notice that confirms the terms of the forbearance and the borrower's or endorser's affirmation of the obligation to make the first payment under the forbearance agreement within 30 days after entering into that agreement. The proposed regulations require the lender to retain a record of the terms and conditions of the forbearance and affirmation in the borrower's or endorser's file.

For the 2011 calendar year, the last year for which data are available, we estimate that 172,915 FFEL borrowers requested forbearance after defaulting on a loan. Of that number, 49,350 borrowers have FFEL program loans held by lenders. Of those borrowers, we estimate that 25 percent (12,338 borrowers) would exercise the option in these proposed regulations to orally acknowledge the debt and agree to repay the debt. The remaining 123,565 loans for which we estimate borrowers will request forbearance after defaulting will be held by the Department. We estimate that 25 percent of those borrowers (30,891 borrowers) who request forbearance from the Department will exercise the option to orally acknowledge the debt and agree to repay the debt, as would be authorized under these proposed regulations. Because OMB requires Federal agencies to account for burden imposed on non-Federal entities separately by type, i.e. public, not-for-profit, and for-profit, the following analysis of the burden imposed on lenders other than the Department is broken down by the types of entities. Note that State guaranty agencies are covered under the ''public'' type of entities.

Of the FFEL Program loans held by lenders, we estimate that public holders (State guaranty agencies) will have 2 FFEL borrowers who seek to orally acknowledge a defaulted FFEL Program loan. On average, we estimate that it would take the lender 0.17 hours (10 minutes) per oral acknowledgment to orally review with the borrower the terms and conditions of the forbearance and document the conversation and place that documentation in the borrower's or endorser's file. For public holders, we estimate that burden would increase by 0.34 hours (2 borrowers multiplied by 0.17 hours per oral forbearance request).

Of the FFEL Program loans, we estimate that not-for-profit holders will have 1,551 FFEL borrowers who seek an oral forbearance on a defaulted FFEL program loan. On average, we estimate that it would take the lender 0.17 hours (10 minutes) per oral acknowledgment to orally review with the borrower the terms and conditions of the forbearance and document the conversation and place that documentation in the borrower's or endorser's file. For not-for-profit holders, we estimate that burden would increase by 264 hours (1,551 borrowers multiplied by 0.17 hours per oral forbearance request).

Of the FFEL Program loans, we estimate that for-profit holders would have 10,785 FFEL borrowers who seek an oral forbearance on a defaulted FFEL Program loan. On average, we estimate that it would take the lender 0.17 hours (10 minutes) per oral acknowledgment to orally review with the borrower the terms and conditions of the forbearance and document the conversation and place that documentation in the borrower's or endorser's file. We estimate that burden would increase by 1,833 hours (10,785 borrowers multiplied by 0.17 hours per oral forbearance request) at for-profit holders.

We estimate there would be an equal amount of burden on the borrower engaged in the oral acknowledgement and agreement to repay the debt request with the lender. The oral acknowledgment process would increase burden by 7,349 hours for all FFEL borrowers (12,338 held by lenders and 30,891 ED-held = 43,229 borrowers multiplied by 0.17 hours per oral forbearance request). Since there is no FFEL general forbearance form approved by OMB, the proposed regulations would impose new burden.

Collectively, we estimate that these proposed FFEL forbearance regulations would increase burden by 9,446 hours under OMB Control Number 1845–0020.

The proposed regulations would amend the current Direct Loan Program regulations to authorize the Secretary, prior to the loan being transferred to the Department's default collections office, to grant forbearance to a borrower or endorser who is in default on a loan based on the borrower's or endorser's oral request. The proposed regulations provide that a forbearance agreement in this situation must include a new agreement to repay the debt signed by the borrower or endorser (as required under the current regulations), or a written or oral affirmation of the borrower's or endorser's obligation to repay the debt. The proposed regulations define ''affirmation'' for this purpose to be an acknowledgment of the loan by the borrower or endorser in a legally binding manner that can take the form of: (1) A new signed repayment agreement or schedule, or another form of signed agreement to repay the debt (as under current regulations); (2) an oral acknowledgment and agreement to

repay the debt that is documented by the Secretary in the borrower's or endorser's file and confirmed by the Secretary in a notice to the borrower; or (3) a payment made on the loan by the borrower or endorser. The proposed regulations also specify that if a forbearance in this situation is based on the borrower's or endorser's oral request and affirmation, the Secretary must orally review with the borrower the terms and conditions of the forbearance, and that the Secretary must send the borrower or endorser a notice that confirms the terms of the forbearance and the borrower's or endorser's affirmation of the obligation to make the first payment under the agreement within 30 days after entering into that agreement. The proposed regulations require the Secretary to retain a record of the terms and conditions of the forbearance and affirmation in the borrower's or endorser's file.

For the 2011 calendar year, 62,905 Direct Loan borrowers requested forbearance after defaulting on a loan. Of that number, we estimate that 25 percent (15,726 borrowers) would have exercised an option to orally acknowledge the debt and agree to repay the debt. On average, we estimate that it would take a borrower 0.17 hours (10 minutes) per oral acknowledgment to listen to the list of terms and conditions of the forbearance as they are reviewed with the borrower. The burden associated with the completion of the General Forbearance Request form, OMB 1845–0031, is estimated to average 0.2 hours (12 minutes). Therefore, the net reduction in burden to provide an oral acknowledgement rather than complete the form is the difference of the two or 0.03 hours (0.20 hours minus 0.17 hours or 2 minutes) per oral forbearance.

We estimate that burden would decrease by 472 hours (15,726 borrowers multiplied by 0.03 hours per oral forbearance) under OMB Control Number 1845–NEW2.

Sections 682.405(b) and 685.211(f)—Reasonable and Affordable Loan Rehabilitation Agreement

The proposed regulations would add new §§ 682.405(b)(1)(iii) and 685.211(f)(1)(i), requiring a guaranty agency and the Secretary, respectively, to base determinations of reasonable and affordable rehabilitation payment amounts of defaulted loans on information provided on an OMB-approved form, and, if requested, supporting documentation.

Proposed §§ 682.405(b)(1)(iii)(A) and 685.211(f)(1)(i)(A) would require a guaranty agency and the Secretary to consider the borrower's, and if applicable, the borrower's spouse's current disposable income in determining a reasonable and affordable rehabilitation payment amount on a defaulted loan. Under proposed §§ 682.405(b)(1)(iii)(A) and 685.211(f)(1)(i)(A), spousal income would not be considered if the spouse does not contribute to the borrower's household income.

Proposed §§ 682.405(b)(1)(iii)(B) and 685.211(f)(1)(i)(B) would require a guaranty agency and the Secretary to consider the borrower's family size, as defined in § 682.215(a)(3) in determining the borrower's loan rehabilitation payment amount.

In calendar year 2011, there were approximately 299,159 FFEL borrowers (192,029 borrowers whose FFEL program loans are held by lenders and 107,130 FFEL program borrowers whose loans are held by the Department) that requested and received a loan rehabilitation agreement for their defaulted loans. We estimate that on average it would take a borrower 1.5 hours (90 minutes) to complete and submit the loan rehabilitation form. Under these proposed regulations, we estimate that burden will increase by 448,739 hours (299,159 borrowers requesting loan rehabilitation multiplied by 1.5 hours per loan rehabilitation requests) under OMB Control Number 1845–NEW1.

In calendar year 2011, there were approximately 92,870 Direct Loan borrowers that requested and received a loan rehabilitation agreement for their defaulted loans. We estimate that it would take a borrower on average 1.5 hours (90 minutes) to complete and submit the loan rehabilitation form. Under these proposed regulations, we estimate that burden will increase by 139,305 hours (92,870 borrowers requesting loan rehabilitation multiplied by 1.5 hours per loan rehabilitation request) under OMB Control Number 1845–NEW1. Collectively, the proposed changes in §§ 682.405 and 685.211 associated with the completion and submission of the reasonable and affordable form would increase burden by 588,044 hours (448,739 hours plus 139,305 hours) under OMB 1845–NEW1.

We estimate that of the 192,029 FFEL loans held by lenders, 66,283 loans are held by state guaranty agencies and 125,746 loans are held by not-for-profit guaranty agencies, with the remaining 107,130 loans (299,159 minus 192,029) held by the Department. Under the proposed regulations, 66,283 FFEL borrowers whose loans are held by state guaranty agencies will request rehabilitation of their defaulted loans and complete the loan rehabilitation form. We estimate that for each loan rehabilitation form submitted it would take the guaranty agency on average 0.5 hours (30 minutes) to review and process the loan rehabilitation form. Under these proposed regulations, we estimate that burden would increase by 33,142 hours (66,283 borrowers requesting loan rehabilitation multiplied by 0.5 hours per loan rehabilitation request) under OMB Control Number 1845–0020.

Under the proposed regulations, we estimate that of the 192,029 FFEL loans held by non-Federal entities, 125,746 FFEL borrowers whose loans are held by not-for-profit guaranty agencies will request rehabilitation and complete the loan rehabilitation form. We estimate that for each loan rehabilitation form submitted it would take the guaranty agency on average 0.5 hours (30 minutes) to review and process the loan rehabilitation form. Under these proposed regulations, we estimate that burden will increase by 62,873 hours (125,746 borrowers requesting loan rehabilitation multiplied by 0.5 hours per loan rehabilitation request) under OMB Control Number 1845–0020.

Proposed §§ 682.405(b)(1)(vi) and 685.211(f)(3) would require a guaranty agency and the Secretary to recalculate the borrower's rehabilitation payment amount if the borrower objects to the payment amount contained in the written repayment agreement that the guaranty agency or the Secretary sent to the borrower.

Of the 299,159 FFEL borrowers in calendar year 2011 that requested rehabilitation of their defaulted loans, we estimate that 12 percent or 35,899 borrowers would raise an objection to the initial determination of the reasonable and affordable monthly payment amount by the guaranty agency or the Secretary. We estimate that each objection will entail a phone conversation or email that would span on average 0.17 hours (10 minutes). This would increase burden to the borrowers for a total of 6,103 hours (35,899 borrowers objecting to the initial determination of the reasonable and affordable payment amount multiplied by 0.17 hours per loan rehabilitation request) under OMB Control Number 1845–0020.

Of the 92,870 Direct Loan borrowers in calendar year 2011 that requested loan rehabilitation of their defaulted loans, we estimate that 11,144 Direct Loan borrowers would raise an objection to the initial determination of the reasonable and affordable monthly payment amount. We estimate that each

objection will entail a phone conversation or email that would span on average 0.17 hours (10 minutes). This would increase burden to the borrowers for a total of 1,894 hours (11,144 borrowers objecting to the initial determination of the reasonable and affordable payment amount multiplied by 0.17 hours per loan rehabilitation request) under OMB Control Number 1845–NEW2.

Proposed §§ 682.405(b)(1)(vii) and 685.211(f)(5) would require a borrower who objects to the monthly repayment amount contained in the written repayment agreement to provide the guaranty agency or the Secretary the documentation needed to calculate a monthly payment amount under the income-based repayment plan formula. If the borrower does not provide this information to the guaranty agency or the Secretary, no rehabilitation agreement would exist with the borrower, and the guaranty agency or the Secretary would not proceed with the rehabilitation.

Of the 299,159 FFEL borrowers in calendar year 2011 that requested rehabilitation of their defaulted loans, we estimate that 12 percent or 35,899 borrowers would choose to submit documentation for a monthly payment amount to be calculated using the income-based repayment plan formula. We estimate that on average, each borrower would take 0.33 hours (20 minutes) to collect, copy, and submit the required documentation. We estimate that burden would increase by 11,847 hours (35,899 borrowers required to submit documentation multiplied by 0.33 hours per loan rehabilitation request) under OMB Control Number 1845–0020.

Of the 92,870 Direct Loan borrowers in calendar year 2011 that requested rehabilitation of their defaulted loans, we estimate that 12 percent or 11,144 borrowers would choose to submit documentation for a monthly payment amount to be calculated using the income-based repayment plan formula. We estimate that on average each borrower would take 0.33 hours (20 minutes) to collect, copy, and submit the required documentation. We estimate that burden would increase by 3,678 hours (11,144 borrowers required to submit documentation multiplied by 0.33 hours per loan rehabilitation request) under OMB Control Number 1845–NEW2.

Proposed §§ 682.405(b)(1)(ix) and 685.211(f)(7) would require the Secretary or the guaranty agency, upon the borrower's request, to adjust the borrower's monthly rehabilitation payment due to a change in the borrower's financial circumstances. The borrower would be required to provide documentation supporting the request.

We estimate that 10 percent of the 299,159 FFEL borrowers who requested rehabilitation of their defaulted loans (29,916 FFEL borrowers, 19,203 of whom have FFEL program loans that are held by lenders and 10,713 of whom have FFEL program loans that are held by the Department) would have a change in their financial circumstances in the initial year the proposed regulation is implemented. We estimate that on average each borrower would take 0.33 hours (20 minutes) to collect, copy, and submit the required documentation. We estimate that burden would increase by 9,872 hours (29,916 borrowers with changes in financial circumstances multiplied by 0.33 hours per loan rehabilitation request) under OMB Control Number 1845–0020.

Of the 19,203 borrowers with FFEL loans held by lenders, 6,628 are held by public guaranty agencies and 12,575 are held by not-for-profit guaranty agencies. Under the proposed regulations, we estimate 6,628 FFEL borrowers whose loans are held by public guaranty agencies would have a change in their financial circumstances in the initial year the proposed regulation is implemented. We estimate that for each request submitted it would take on average the guaranty agency 0.5 hours (30 minutes) to review and process the request. Under these proposed regulations, we estimate that burden would increase by 3,314 hours (6,628 borrowers requesting loan rehabilitation multiplied 0.5 hours per loan rehabilitation request equals 3,314 hours) under OMB Control Number 1845–0020.

Under the proposed regulations, we estimate that 12,575 FFEL borrowers whose loans are held by not-for-profit guaranty agencies would request a change in their reasonable and affordable payment amount due to changed financial circumstances in the initial year the proposed regulation is implemented. We estimate that for each request submitted it would take on average the guaranty agency 0.5 hours (30 minutes) to review and process the request for a change in the payment amount. Under these proposed regulations, we estimate that burden will increase by 6,288 hours (12,575 borrowers requesting a change in the loan rehabilitation payment amount multiplied by 0.5 hours per request) under OMB Control Number 1845–0020.

We estimate that 10 percent of Direct Loan borrowers who are rehabilitating their defaulted loans (9,287 Direct Loan borrowers) would request a change in the reasonable and affordable payment amount due to a change in their financial circumstances in the initial year the proposed regulation is implemented. We estimate that on average each borrower would take 0.33 hours (20 minutes) to collect, copy, and submit the required documentation. We estimate that burden would increase by 3,065 hours (9,287 borrowers requesting a change in the reasonable and affordable payment amount multiplied by 0.33 hours per payment change request equals 3,065 hours) under OMB Control Number 1845–NEW2.

Sections 682.405(a) and 685.211(f)—Suspension of Administrative Wage Garnishment for Borrowers Rehabilitating Defaulted Loans

The proposed regulations would add new §§ 682.405(a)(3)(i) and 685.211(f)(12)(i) to the FFEL and Direct Loan Program regulations requiring a guaranty agency or the Secretary, respectively, to suspend collecting on a defaulted loan through Administrative Wage Garnishment (AWG) after the borrower makes five qualifying payments under a loan rehabilitation agreement. The guaranty agency or the Secretary would not be permitted to suspend AWG prior to the fifth payment, and, after the fifth payment, the borrower would have the option to request that the guaranty agency or the Secretary continue collecting on the loan through AWG while the borrower makes voluntary payments under the rehabilitation agreement.

Under proposed § 682.405(a)(3)(ii), we estimate that state guaranty agencies will have 663 FFEL borrowers from whom they will be collecting payments through AWG while the borrower is also making voluntary repayments to rehabilitate the loan. After the borrower has made five qualifying voluntary loan payments (in addition to the AWG payments), the holder would suspend AWG. We estimate that on average each suspension of AWG would take one hour (60 minutes). We estimate that burden would increase by 663 hours (663 borrower requests multiplied by 1 hour per AWG suspension equals 663 hours) under OMB Control Number 1845–0020.

Under proposed § 682.405(a)(3)(ii), we estimate that not-for-profit guaranty agencies will have 1,257 FFEL borrowers from whom they will be collecting payments using AWG while the borrower is also making voluntary repayments to rehabilitate the loan. After the borrower has made five qualifying voluntary loan payments (in addition to the AWG payments) the

holder would suspend AWG. We estimate that on average each suspension of AWG would take 1 hour (60 minutes). We estimate that burden would increase by 1,257 hours (1,257 borrower requests multiplied by 1 hour per AWG suspension equals 1,257 hours) under OMB Control Number 1845–0020.

Any burden under proposed § 685.211(f)(12)(i) is attributable to the Department and therefore not a part of this burden assessment of affected entities.

Collectively, the proposed changes in § 682.405(a) and (b) would increase burden by 135,359 hours in OMB Control Number 1845–0020.

Collectively, the proposed changes in § 685.211(f) would increase burden by 8,637 hours in OMB Control Number 1845–NEW2.

Sections 674.33(g), 682.402(d), and 685.214—Closed School Discharge

The proposed regulations at §§ 674.33(a)(4)(i)(B), 682.402(d)(1), and 685.214(c)(1)(iii) would extend, for purposes of the closed school discharge, the current 90-day period to 120-days for students who leave before a school closes and add examples of the types of exceptional circumstances under which the Department may extend the 120-day window.

During the 2011 calendar year, 0 Perkins Loan borrowers received closed school loan discharges. We estimate that 15 Perkins Loan borrowers submitted applications for closed school discharges. We estimate that the average burden per response is 0.5 hours (30 minutes) for each loan discharge application and that by expanding the period from 90 days to 120 days prior to school closure for students who had withdrawn to apply for a closed school loan discharge would increase the number of applicants by 20 percent. As a result there would be an estimated 18 applications under the proposed regulation for a total increase in burden of 2 hours (18 borrowers applying for loan discharge multiplied by 0.5 hours per application minus 15 borrowers applying for loan discharge under current regulations multiplied by 0.5 hours per application) under OMB Control Number 1845–0015.

During the 2011 calendar year, 163 FFEL borrowers received closed school loan discharges. We estimate that 230 FFEL borrowers submitted applications for discharge. We estimate that the average burden per response is 0.5 hours (30 minutes) for each loan discharge application and that by expanding the period from 90 days to 120 days prior to school closure for students who had withdrawn to apply for a closed school loan discharge would increase the number of applicants by 20 percent. As a result there would be 276 applications under the proposed regulation for a total increase in burden of 23 hours (276 borrowers applying for loan discharge multiplied by 0.5 hours per application minus 230 borrowers applying for loan discharge under current regulations multiplied by 0.5 hours per application) under OMB Control Number 1845–0015.

During the 2011 calendar year, 128 Direct Loan borrowers received closed school loan discharges. We estimate that 295 Direct Loan borrowers submitted applications for discharge. We estimate that the average burden per response is 0.5 hours (30 minutes) for each loan discharge application and that by expanding the period from 90 days to 120 days prior to school closure for students who had withdrawn to apply for a closed school loan discharge would increase the number of applicants by 20 percent, thus totaling 354 applications under the proposed regulation for a total increase in burden of 29 hours (354 borrowers applying for loan discharge multiplied by 0.5 hours per application minus 295 borrowers applying for loan discharge under current regulations multiplied by 0.5 hours per application) under OMB Control Number 1845–0015.

Collectively, the total increase in burden is 54 hours under OMB Control Number 1845–0015.

Sections 674.19, 682.610, and 685.309—School Enrollment Status Reporting Requirements

For the Federal Perkins Loan program, the proposed regulations would add a new § 674.19(f) with the heading ''enrollment reporting process.'' Proposed § 674.19(f)(1) would provide that, upon receipt of an enrollment report from the Secretary, an institution must update all information included in the report and return the report to the Secretary in the manner and format prescribed by the Secretary and within the timeframe prescribed by the Secretary. Proposed § 674.19(f)(2) would provide that, unless it expects to submit its subsequent updated enrollment report to the Secretary within the next 60 days, an institution must notify the Secretary within 30 days after: (1) The date the school discovers that a loan under title IV of the HEA was made to a student who was enrolled or accepted for enrollment at the institution, and the student has ceased to be enrolled on at least a half-time basis, or has failed to enroll on at least a half-time basis for the period for which the loan was intended; or (2) the date the school discovers that a student who is enrolled at the institution and who received a loan under title IV of the HEA has changed his or her permanent address. Because the Secretary already receives enrollment information on Federal Perkins Loan borrowers who also have a FFEL loan or a Direct Loan, the additional burden associated with sending enrollment reports to institutions for the Federal Perkins Loan program is only associated with those Federal Perkins Loan borrowers whose only loan received under title IV of the HEA is a Federal Perkins Loan and who are enrolled on at least a half-time basis or who had recently changed enrollment status.

In the 2011 calendar year, there were 2,070,514 Federal Perkins Loan borrowers. Of the 2,070,514 Federal Perkins Loan borrowers, 240,959 borrowers have a Federal Perkins Loan as the only loan received under title IV of the HEA. Of the 240,959 borrowers, 53 percent (127,708 borrowers) were enrolled at least half-time or had recently changed enrollment status. The Secretary will be sending enrollment reports to each of the institutions approximately every 60 days or 6 reports per year. We estimate that on average the completion and submission of an enrollment report would take 0.05 hours (3 minutes) per borrower. Burden would increase by 38,312 hours (127,708 borrowers multiplied by 0.05 hours per borrower multiplied by 6 reports per year) under OMB Control Number 1845–0019.

For the 2011 calendar year 51 percent of the Federal Perkins loan borrowers or 65,131 affected borrowers were at public institutions, therefore we estimate that burden would increase for public institutions by 19,539 hours (38,312 hours multiplied by 0.51) under OMB 1845–0019.

For the 2011 calendar year 45 percent of the Federal Perkins loan borrowers or 57,469 affected borrowers were at private not-for-profit institutions, therefore we estimate that burden would increase for private not-for-profit institutions by 17,240 hours (38,312 hours multiplied by 0.45) under OMB 1845–0019.

For the 2011 calendar year 4 percent of the Federal Perkins loan borrowers or 5,108 affected borrowers were at proprietary institutions, therefore we estimate that burden would increase for proprietary institutions by 1,533 hours (38,312 hours multiplied by 0.04) under OMB 1845–0019.

Collectively, the proposed regulatory changes to § 674.19 would increase burden by 38,312 hours for 127,708

affected borrowers under OMB 1845–0019.

For the FFEL Program, the proposed regulations would replace the term ''student status confirmation reports'' in § 682.610(c) with the term ''enrollment reporting process,'' and would revise § 682.610(c)(1) to provide that upon receipt of an enrollment report from the Secretary, a school must update all information included in the report and return the report to the Secretary in the manner and format prescribed by the Secretary and within the timeframe specified by the Secretary. Institutions currently participating in the FFEL or Direct Loan programs would continue to report enrollment to the Secretary and the lender. Because the only change regarding the FFEL Program reporting is in the definition of the reporting requirement, there is no change in burden for institutions participating in the FFEL and Direct Loan programs.

Section 674.34—Deferment of Repayment—Federal Perkins Loans

The proposed regulations in § 674.34(f)(1) would require schools that participate in the Perkins Loan Program to use the same eligibility criteria to define an eligible graduate fellowship program and to establish the eligibility of a borrower for a graduate fellowship deferment that lenders and the Department use in the FFEL and Direct Loan programs, respectively. The proposed regulations would require that a borrower provide the institution with a statement from an authorized official of the borrower's graduate fellowship program certifying: (1) That the borrower holds at least a bachelor's degree; and (2) the borrower's anticipated completion date of the program. In calendar year 2011 there were 1,104 Perkins borrowers who applied for a graduate fellowship deferment. We estimate that on average it would take the borrower 0.25 hours (15 minutes) to obtain the certification from an authorized official of the graduate fellowship program and to complete and submit the Perkins loan deferment form multiplied by an estimated 1,104 deferment applications equals 276 hours of increased burden to borrowers under OMB Control Number 1845–0019.

For the 2011 calendar year 51 percent of the Federal Perkins Loan borrowers or 563 affected borrowers were at public institutions, therefore we estimate that burden would increase for authorizing officials at public institutions by 141 hours (1,104 applications multiplied by 0.51 multiplied by 0.25 hours per certification) under OMB 1845–0019.

For the 2011 calendar year 45 percent of the Federal Perkins Loan borrowers or 497 affected borrowers were at private not-for-profit institutions, therefore we estimate that burden would increase authorizing officials at for private not-for-profit institutions by 124 hours (1,104 applications multiplied by 0.45 multiplied by 0.25 hours per certification) under OMB 1845–0019.

For the 2011 calendar year 4 percent of the Federal Perkins Loan borrowers or 44 affected borrowers were at proprietary institutions, therefore we estimate that burden would increase for private not-for-profit institutions by 11 hours (1,104 applications multiplied by 0.04 multiplied by 0.25 hours per certification) under OMB 1845–0019.

Collectively, the proposed regulatory changes to § 674.34 would increase burden by 552 hours under OMB 1845–0019.

Section 682.410(b)(9)(i)(T)(2)—Administrative Wage Garnishment (AWG)—Use of Third-Party Contractors

The proposed regulations would also add a new § 682.410(b)(9)(i)(T) to the regulations, which specifies the functions that may be performed by a third-party servicer or collection contractor employed by the guaranty agency for services needed in the AWG process. The proposed regulations would make clear that the guaranty agency may not delegate to any third party the decision to order withholding of an individual borrower's wages, and must create and retain records to demonstrate that each order issued has been individually authorized by an appropriate official of the guaranty agency. The proposed regulations would also specify the manner by which a withholding order may be sent to employers and the permissible activities that may be performed by a third-party servicer or collection contractor employed by the guaranty agency with respect to withholding orders. Only an authorized official of the guaranty agency may determine that an individual withholding order is to be issued. The guarantor must record the official's determination for each order it issues by either including the official's signature on the order, or, by retaining in the agency's records, the identity of the approving official, the date of the approval, the amount or rate of the order, the name and address of the employer to whom the order was issued and the debt for which the order was issued.

In calendar year 2011, we estimate there were 84,293 FFEL Program borrowers whose loans were held by state guaranty agencies and for which the guaranty agency had initiated AWG. We estimate that on average the guaranty agency would take 0.25 hours (15 minutes) to meet the recordkeeping requirements specified above. Total burden hours would increase by 21,073 hours (84,293 multiplied by 0.25 hours) under OMB 1845–0020.

In calendar year 2011, we estimate there were 159,912 FFEL borrowers whose loans were held by not-for-profit guaranty agencies and for which the guaranty agency had initiated AWG. We estimate that on average the guaranty agency would take 0.25 hours (15 minutes) to meet the recordkeeping requirements specified above. Total burden hours would increase by 39,978 hours (159,912 multiplied by 0.25 hours) under OMB 1845–0020.

The proposed changes in § 682.410(b)(9)(i)(T)(2) would increase burden by 61,051 hours under OMB Control Number 1845–0020.

Section 682.410(b)(9)(i)(H) Administrative Wage Garnishment (AWG)—Borrower Hearing Requests

The proposed regulations would also replace § 682.410(b)(9)(i)(L) of the FFEL Program regulations with § 682.410(b)(9)(i)(H) to provide that if a borrower's written request for a hearing is received by the guaranty agency after the 30th day following the date of the garnishment notice and a decision is not rendered within 60 days following receipt of the borrower's written request for a hearing, the guaranty agency must suspend the order beginning on the 61st day after the hearing request was received until a hearing is provided and a decision is rendered.

If a borrower does not request a hearing within the 30-day time limit, the guaranty agency must go forward with the AWG. However, if a borrower does eventually request a hearing, a guaranty agency would still be required to provide one in sufficient time to have a decision issued within 60 days of the request. The Department added a provision specifying that if this hearing is not provided and a decision issued within 60 days, then the agency must suspend the AWG order beginning on the 61st day until a decision is issued.

In calendar year 2011, we estimate there were 84,293 FFEL borrowers whose loans were held by state guaranty agencies and for which the agencies had initiated AWG. We estimate that 10 percent of these borrowers (8,429) would request a hearing and that in 10 percent of those cases (843) a decision would not be rendered until after 60 days following the receipt of the borrower's request. On average, we estimate that it would take one hour (60

minutes) to suspend an administrative wage garnishment order. The total increase in burden would be 843 hours (843 FFEL borrowers undergoing AWG who requested a hearing where a decision was not rendered until after 60 days following the receipt of the borrower's request multiplied by one hour per suspension) under OMB 1845–0020.

In calendar year 2011, we estimate there were 159,912 FFEL borrowers whose loans where held by not-for-profit guaranty agencies and for which the agencies had initiated AWG. We estimate that 10 percent of these borrowers (15,991) would request a hearing and that in 10 percent of those cases (1,599) a decision would not be rendered until after 60 days following the receipt of the borrower's request. On average, we estimate that it would take one hour (60 minutes) to suspend an administrative wage garnishment order. The total increase in burden would be 1,599 hours (1,599 FFEL borrowers undergoing AWG who requested a hearing where a decision was not rendered until after 60 days following the receipt of the borrower's request multiplied by one hour per suspension) under OMB 1845–0020.

Collectively, the proposed changes in § 682.410(b)(9)(i)(H) would increase burden by 2,442 hours in OMB Control Number 1845–0020.

Section 682.410(b)(9)(i)(J)—Administrative Wage Garnishment (AWG)—Hearing Administration

The proposed regulations would add new paragraph (b)(9)(i)(J) and would provide for the manner by which the hearing is administered and certain provisions relating to bringing forth additional evidence and continuances. Specifically, the proposed regulations would require that the hearing be conducted as an informal proceeding, require witnesses in an oral hearing to testify under oath or affirmation, and require maintenance of a summary record of the hearing. The proposed regulations would also allow the borrower to request a continuance to submit additional evidence.

In calendar year 2011, we estimate there were 84,293 FFEL borrowers whose loans where held by state guaranty agencies and for which the agencies had initiated AWG. We estimate that 10 percent of these borrowers (8,429) would request a hearing. We estimate that on average each summary record would take 1 hour (60 minutes). The total burden increase for this recordkeeping would be 8,429 hours (8,429 hearings multiplied by one hour per hearing) under OMB 1845–0020.

In calendar year 2011, we estimate there were 159,912 FFEL borrowers whose loans where held by not-for-profit guaranty agencies and for which the agencies had initiated AWG. We estimate that 10 percent of these borrowers (15,991) would request a hearing. We estimate that on average each summary record would take one hour (60 minutes). The total burden increase for this recordkeeping would be 15,991 hours (15,991 hearings multiplied by one hour per hearing) under OMB 1845–0020.

Collectively, the proposed changes in § 682.410(b)(9)(i)(J) would increase burden by 24,420 hours in OMB Control Number 1845–0020.

Section 682.410(b)(9)(i)(Q)—Administrative Wage Garnishment (AWG)—Recent Reemployment After Involuntary Unemployment

Proposed § 682.410(b)(9)(i)(Q) would clarify that a borrower who wishes to object to AWG on the basis that he or she is not subject to garnishment because of recent reemployment after involuntary separation, bears the burden of raising and proving that claim.

In calendar year 2011, we estimate that there were 84,293 FFEL borrowers whose loans where held by state guaranty agencies and for which the agencies had initiated AWG. Of that number, we estimate that 8 percent (6,743) became unemployed involuntarily. Furthermore, we estimate that a sub-group of those who became unemployed involuntarily, 5 percent (337) gained subsequent reemployment. We estimate that the average amount of time for each borrower subject to AWG in this sub-group to provide documentation that supports their claim to not be subject to AWG due to their recent reemployment to be 0.5 hours. The increased burden to provide documentation that would support the borrower's claim that he not be subject to AWG due to recent reemployment is 169 hours (337 borrowers whose student loans were being collected by AWG, who became unemployed involuntarily, but subsequently gained reemployment multiplied by 0.5 hours per claim) under OMB 1845–0020.

In calendar year 2011, we estimate that there were 159,912 FFEL borrowers whose loans where held by not-for-profit guaranty agencies and for which the agencies had initiated AWG. Of that number, we estimate that 8 percent (12,793) became unemployed involuntarily. Furthermore, we estimate that a sub-group of those who became unemployed involuntarily, 5 percent (640) gained subsequent reemployment. We estimate that the average amount of time for each borrower subject to AWG in this sub-group to provide documentation that supports their claim to not be subject to AWG due to their recent reemployment to be 0.5 hours. The total amount of increased burden to provide documentation that would support the borrower's claim that he not be subject to AWG due to recent reemployment is 320 hours (640 borrowers whose loans were being collected by AWG, who became employed involuntarily, but subsequently gained reemployment multiplied by 0.5 hours per claim) under OMB 1845–0020.

The proposed changes in § 682.410(b)(9)(i)(Q) would collectively increase burden by 489 hours in OMB Control Number 1845–0020.

Collectively, the proposed changes in all subparagraphs of § 682.410(b)(9) would increase burden by 88,402 hours in OMB Control Number 1845–0020.

Repeal of Unnecessary FFEL Program Regulations

The proposed regulatory language removes provisions from 34 CFR part 682 that are no longer required as a result of the SAFRA Act included in the Health Care and Reconciliation Act of 2010. One of the provisions of the SAFRA Act was the termination, as of July 1, 2010, of the authority for lenders to make new loans under the FFEL program. These proposed regulations would remove the FFEL provisions that are now unnecessary in light of this change and would also make technical and conforming changes. A number of the proposed technical and conforming changes in 34 CFR Part 682 are for clarity, others are due to the elimination of cross-references.

Typically, the results of negotiated rulemaking produce some regulatory changes that correspond to reporting or recordkeeping burden on affected entities such as borrowers, lenders, or guaranty agencies. The primary information collection associated with 34 CFR Part 682 is the currently approved OMB 1845–0020. Unlike other newly proposed regulations where the resultant proposed regulation would either increase or decrease burden as a result of the change in a regulation, this expansive effort to eliminate unneeded regulations includes more wholesale changes being proposed to 34 CFR Part 682. As a result, the entire history of burden associated with OMB 1845–0020 was examined. While the burden assessments for OMB 1845–0020 stretch back over 13 years, the necessary level of detail does not exist to disaggregate

the amount of the currently approved amount of burden in this collection into its corresponding subsections of 34 CFR Part 682.

Therefore, a new methodology to calculate burden is required. We are able to establish that there are 38 subsections of 34 CFR Part 682 that have burden under OMB 1845–0020. We propose to divide the total of the currently approved burden hours of 12,352,197 hours by the 38 affected subsections which on average yields 325,058 hours per affected subsection.

Each of the proposed subsections listed below will use this number of burden hours as a starting point. The proposed changes as provided below explain the burden impact.

The specific number of respondents from the affected entities is similarly unavailable, so we have established a percentage based on the number of borrowers per loan type to distribute the number of respondents across the affected entities.

Section 682.102—Repaying a Loan

The proposed regulations would amend the section heading, remove § 682.102(a) through (d), which describe the application process for Stafford, PLUS, and Consolidation loans, and redesignate the paragraphs in current § 682.102(e), which describes the loan repayment process, as § 682.102(a)–(g).

These proposed changes would not alter the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020.

Section 682.200—Definitions—Lender

The proposed regulations would remove the provisions of current § 682.601(a)(3), (a)(5), and (a)(7), and place these provisions into paragraph (8) of the definition of ''Lender'' in § 682.200(b).

These proposed changes would not alter the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020.

Section 682.205—Disclosure Requirements for Lenders

The proposed regulations would remove § 682.205(a) (the initial disclosure statement), (b) (statement of borrower rights and responsibilities), (g) (plain language disclosure), and (i) (separate disclosure for Consolidation loans) from the FFEL Program regulations and renumber the remaining provisions. The remaining provisions include providing repayment information, providing required disclosures during the repayment period, and providing required disclosures for borrowers having difficulty making payments.

The proposed changes would decrease the required burden by 162,529 hours, and therefore the current burden hours would decrease from 325,058 hours to 162,529 hours under OMB Control Number 1845–0020.

Section 682.206—Due Diligence in Making a Loan

The proposed regulations would remove § 682.206 from the FFEL regulations. The SAFRA Act eliminated the authority to make new FFEL Program loans, including FFEL Consolidation loans. As a result, the requirements governing the making of new FFEL Program loans are no longer needed and the previous burden associated with the making of a loan by a lender would be removed.

The proposed change would remove all of the prior assessment of 325,058 hours of burden associated under OMB Control Number 1845–0020, and therefore burden would decrease by 325,058 hours for a total of 0 hours.

Section 682.208—Due Diligence in Servicing a Loan

The proposed regulations would replace the term ''national credit bureau(s)'' with ''nationwide consumer reporting agency(ies)'' to more accurately reflect the reporting requirements.

These proposed changes would not alter the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020.

Section 682.209—Repayment of a Loan

The proposed regulations would amend § 682.209(a)(3)(i) by adding a new paragraph that specifies that borrowers with fixed interest rates on their Stafford loans enter repayment on those loans the day after six months following the date the borrower was no longer enrolled on at least a half-time basis. The proposed regulations would remove current § 682.209(e) through (g) and (j) from the regulations and re-designate the remaining paragraphs as paragraphs (e)–(g). Redesignated § 682.209(e) (current paragraph (h)) would be amended to specify that a FFEL Consolidation loan borrower repaying under the IBR plan may make a scheduled monthly payment of less than the interest that accrues on the loan.

The proposed changes would decrease the burden by 65,012 hours, and therefore the current burden assessment would decrease from 325,058 to 260,046 hours under OMB Control Number 1845–0020.

Section 682.210—Deferment

The proposed regulations would amend § 682.210(a)(4) of the regulations to provide that a borrower's representative may request a military service deferment on behalf of the borrower. In § 682.210(b), the introductory language in paragraphs (b)(1) through (6) of § 682.210 would be revised to identify the cohort of borrowers to which each paragraph applies. Throughout § 682.210(b) cross-references would be added to the eligibility criteria that are applicable to deferments available to these borrowers. The proposed regulations also amend § 682.210(s)(2) by removing the exception clause at the end of the provision, and amend § 682.210(u)(5) by replacing the words ''military active'' with ''post-active''.

These proposed changes would not alter the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020.

Section 682.211—Forbearance

Substantive changes in this section have been identified earlier which added 9,446 hours of burden to OMB Control Number 1845–0020. There were no further changes to this section that would alter the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020.

Collectively, the proposed changes would increase the burden assessment from 325,058 by 9,446 hours (as identified earlier) for a total of 334,504 hours under OMB Control Number 1845–0020.

Section 682.212—Prohibited Transactions

There is no change to the current language in this section of the regulations, however the current burden referenced in OMB Control Number 1845–0020 is incorrectly calculated.

This section primarily defines ''prohibited transactions,'' but does not impose recordkeeping or reporting requirements upon entities and thus does not impose burden. Therefore, these proposed regulations remove the 325,058 hours of burden that was previously incorrectly attributed to this section of the regulations. While subsection 34 CFR 682.212(h) provides that an institution, at its option, may make available a list of recommended or suggested lenders, the burden associated with that reporting is accounted for in §§ 601.10 and 668.14.

We propose removal of the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020, and therefore burden would decrease by 325,058 hours for a total of 0 hours.

Section 682.214—Compliance With Equal Credit Opportunity Requirements

The proposed regulations would remove § 682.214 from the FFEL regulations. The SAFRA Act ended the making of new FFEL loans and therefore these requirements can be eliminated from the FFEL regulations.

The proposed change would remove the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020, and therefore burden would decrease by 325,058 hours for a total of 0 hours.

Section 682.216—Teacher Loan Forgiveness Program

The proposed regulations provide for minor language changes.

These proposed changes would not alter the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020.

Section 682.301—Eligibility of Borrowers for Interest Benefits on Stafford and Consolidation Loans

The proposed regulations would remove § 682.301(c) from the regulations. The SAFRA Act ended the making of new FFEL Program loans and this provision related to determining borrower eligibility for the interest subsidy on new loans would be eliminated.

The proposed change would remove the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020, and therefore burden would decrease by 325,058 hours for a total of 0 hours under this section.

Section 682.305—Procedures for Payment of Interest Benefits and Special Allowance and Collection of Origination and Loan Fees

Section 682.305(c)(1)(ii) specifies that, regardless of the dollar volume of loans originated or held, a school lender or an eligible lender serving as trustee for a school or school-affiliated organization originating FFEL Program loans as a lender must submit an independent compliance audit to the Department each year. The proposed regulations would remove the reference to FFEL lenders originating loans. The proposed regulations would also remove the language specifying that a school and lender serving as a trustee for a school must submit an independent compliance audit to the Department each year.

The number of school lenders or lenders serving as a trustee on behalf of a school or a school affiliated organization whose purpose is to originate loans for which the proposed regulations would provide relief is so small as to not be substantive. As a result, these proposed changes would not alter the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020.

Section 682.401—Basic Program Agreement

The proposed regulations would remove from § 682.401 language that addresses new loan originations, the process supporting loan origination, and a guaranty agency's efforts to secure new loan volume. These provisions can be eliminated from the FFEL Program regulations because no new FFEL loans are being made. The remaining provisions proposed for elimination relate to school eligibility to participate in a guaranty agency's program and the authority of an agency to limit, suspend, or terminate a school from its program. For purposes of new loans, schools now participate only in the Direct Loan Program. Any future actions to limit, suspend, or terminate a school's participation in the student loan programs would be undertaken by the Department under 34 CFR part 668, subpart G. Therefore, § 682.401(b)(6) can also be eliminated from the FFEL Program regulations.

The proposed changes would decrease the burden related to FFEL processes by 32,506 hours, and therefore the current burden hours would decrease from 325,058 hours by 32,506 hours to 292,552 hours under OMB Control Number 1845–0020.

Section 682.402—Death, Disability, Closed School, False Certification, Unpaid Refunds, and Bankruptcy Payments

Substantive changes in this section have been identified earlier under OMB 1845–0015. There were no further changes to this section that impacted the burden under OMB 1845–0020.

As a result, the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020 would not be altered.

Section 682.404—Federal Reinsurance Agreement

The proposed regulations would make conforming language changes required due to the elimination of previous cross-references or obsolete requirements.

These proposed changes would not alter the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020.

Section 682.405—Loan Rehabilitation Agreement

Substantive changes in this section have been identified earlier. There were no further changes to this section.

The substantive changes would be in addition to the previous burden assessment of 325,058 hours under OMB Control Number 1845–0020 and the earlier assessment increases burden by 135,359 hours in OMB 1845–0020 for a total burden of 460,417 hours.

Section 682.406—Conditions for Claim Payments From the Federal Fund and for Reinsurance Coverage

The proposed regulations would make a minor wording change due to the elimination of previous cross-references and add an ending date coinciding with the implementation of the SAFRA Act, which ended the making of new FFEL Program loans.

These proposed changes would not alter the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020.

Section 682.409—Mandatory Assignment by Guaranty Agencies of Defaulted Loans to the Secretary

The proposed regulations would make no changes to this section of the regulations.

These proposed regulations would not alter the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020.

Section 682.410—Fiscal, Administrative, and Enforcement Requirements

Apart from the earlier discussion of the changes made to the administrative wage garnishment provisions in this section of the regulations, the proposed regulations would only make minor wording changes to correct cross-references and delete obsolete references.

Substantive changes in this section have been identified earlier. There are no further changes to this section. These proposed changes would not alter the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020 and the earlier assessment that increased burden by 88,402 hours in OMB 1845–0020 for a total of 413,460 hours.

Section 682.411—Lender Due Diligence in Collecting Guaranty Agency Loans

The proposed regulations would make a minor wording change.

These proposed changes would not alter the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020.

Section 682.412—Consequences of the Failure of a Borrower or Student To Establish Eligibility

The proposed regulations would make a minor wording change.

These proposed changes would not alter the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020.

Section 682.414—Records, Reports, and Inspection Requirements for Guaranty Agency Programs

The proposed regulations would make minor wording changes. One of the minor wording changes would eliminate a reporting category from annual guaranty agency reporting requirement. Under proposed § 682.414, annually, for each State in which it operates, a guaranty agency report of the total guaranteed loan volume, default volume, and default rate does not have to be categorized by schools for all loans guaranteed after December 31, 1980. We estimate that this reduction in reporting categories would decrease the previous burden assessment by 16,253 hours, and therefore the current burden of 325,058 would decrease to 308,805 hours under OMB Control Number 1845–0020.

Section 682.417—Determination of Federal Funds or Assets To Be Returned

The proposed regulations make no changes to this section of the regulations. These proposed changes would not alter the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020.

Section 682.418—Prohibited Uses of the Assets of the Operating Fund During Periods in Which the Operating Fund Contains Transferred Funds Owed to the Federal Fund

The proposed regulations would remove § 682.418 from the FFEL regulations. The proposed change would remove the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020, and therefore burden would be decreased by 325,058 hours for a total of 0 hours based on the elimination of the prior FFEL requirements.

Section 682.421—Funds Transferred From the Federal Fund to the Operating Fund by a Guaranty Agency

The proposed regulations would remove § 682.421 from the FFEL regulations. The proposed change would remove the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020, and therefore burden would decrease by 325,058 hours for a total of 0 hours based on the elimination of the prior FFEL requirements.

Section 682.507—Due Diligence in Collecting a Loan

Section 682.508—Assignment of a Loan

Section 682.511—Procedures for Filing a Claim

Section 682.515—Records, Reports, and Inspection Requirements for Federal GSL Program Lenders

The proposed regulations would remove all of the regulations under Part 682, subpart E (§§ 682.500 through 682.515) and reserve the subpart. The proposed regulations would also remove FISL-related Appendix C to part 682 from the regulations.

The proposed change would remove the prior burden assessment of 1,300,232 hours under OMB Control Number 1845–0020, and therefore burden would decrease by 325,058 hours for each of these four sections and decrease burden by 1,300,232 hours for a total of 0 hours based on the elimination of the prior FFEL requirements.

Section 682.602—Rules for a School or School-Affiliated Organization That Makes or Originates Loans Through an Eligible Lender Trustee

The proposed regulations would remove § 682.602 from the FFEL regulations. The proposed change would remove the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020, and therefore burden would decrease by 325,058 hours for a total of 0 hours based on the elimination of the prior FFEL requirements.

Section 682.603—Certification by a School That Participated in Connection With a Loan Application

The proposed regulations would make conforming language changes required due to the elimination of a cross-reference and reorganization due to a deletion of previous requirements.

These proposed changes would not alter the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020.

Section 682.604—Processing the Borrower's Loan Proceeds and Counseling Borrowers (Required Exit Counseling for Borrowers)

The proposed regulations would change the heading of § 682.604, remove current paragraph (a), remove and reserve paragraph (b), and remove paragraphs (c) through (f) and (h). The proposed regulations would also redesignate current paragraph (g) as paragraph (a). Newly redesignated § 682.604(a)(1) would be amended to include another option for providing exit counseling to a student borrower who withdraws without the school's knowledge or fails to complete required exit counseling. In addition to the existing options described under ''Current Regulations,'' a school could also send written counseling materials to an email address provided by the student borrower. Newly redesignated § 682.604(a)(2) would be amended by replacing cross-references to current paragraph (a), which we are proposing to remove, with the substantive information contained in the cross-referenced provision that must be included in the counseling. A new paragraph (a)(5) would also be added to newly redesignated § 682.604(a) to clarify that: (1) A school's compliance with the Direct Loan Program exit counseling requirements in 34 CFR 685.304(b) satisfies the FFEL exit counseling requirements for student borrowers who received both FFEL and Direct Loan program loans for attendance at the school if the school provides the information required by § 682.604(a)(2)(i) and (a)(2)(ii); and (2) a student's completion of interactive exit counseling offered by the Secretary meets both the FFEL exit counseling requirements and the Direct Loan exit counseling requirements in 34 CFR 685.304(b).

The proposed changes would decrease the previous burden assessment of 325,058 hours by 211,288 hours, and therefore the current burden of 325,058 hours would decrease to 113,770 hours under OMB Control Number 1845–0020 because the burden associated with new FFEL Program loans would be eliminated.

Section 682.605—Determining the Date of a Student's Withdrawal

The proposed regulations would not make any changes to this section. These proposed regulations would not alter the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020.

Section 682.610—Administrative and Fiscal Requirements for Schools That Participated

Apart from the earlier discussion of the changes made to this section, the proposed regulations would only make minor wording changes.

These proposed changes would not alter the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020.

Section 682.711—Reinstatement After Termination

The proposed regulations would remove the language regarding the loss of a school lender's participation upon the loss of the school's eligibility to participate in the Title IV, Federal student financial aid programs.

These proposed changes would not alter the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020.

Section 682.712—Disqualification Review of Limitation, Suspension, and Termination Actions Taken by Guarantee Agencies Against Lenders

The proposed regulations would remove a cross-reference to a section proposed for deletion. These proposed changes would not alter the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020.

Section 682.713 Disqualification Review of Limitation, Suspension, and Termination Actions Taken by Guaranty Agencies Against a School

The proposed regulations would remove § 682.713 from the FFEL Program regulations. The proposed change would remove the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020, therefore burden would decrease by 325,058 hours for a total of 0 hours based upon the elimination of the prior FFEL requirements.

Consistent with the discussion above, the following chart describes the sections of the proposed regulations involving information collections, the information being collected, and the collections that the Department will submit to the Office of Management and Budget for approval and public comment under the Paperwork Reduction Act, and the estimated costs associated with the information collections. The monetized net savings from of the reduced burden on lender/guaranty agencies, institutions, and borrowers using wage data developed using BLS data, available at *http://www.bls.gov/ncs/ect/sp/ecsuphst.pdf,* is −$86,625,970 as shown in the chart below. This cost was based on an hourly rate of $24.61.

COLLECTION OF INFORMATION

Regulatory section	Information collection	OMB Control No. and estimated burden [change in burden]	Estimated costs
§682.211 Forbearance	These proposed regulations amend the current FFEL regulations to authorize a lender to grant forbearance to a borrower who is in default on a loan, but prior to a default claim payment based on the borrower's oral request. The lender must orally review with the borrower the terms and conditions of the forbearance and send a notice confirming the terms within 30 days of the oral agreement.	OMB 1845–0020 ..... The Department estimates that the burden would increase by 9,446 hours.	$232,466.
§685.205 ;Forbearance	These proposed regulations amend the current Direct Loan regulations to authorize the Secretary to grant forbearance to a borrower who is in default on a loan, but prior to a default claim payment based on the borrower's oral request. The Secretary must orally review with the borrower the terms and conditions of the forbearance and send a notice confirming the terms within 30 days of the oral agreement.	OMB 1845–NEW2 The Department estimates that the burden would decrease by 472 hours.	−11,616.
§§ 682.405 and 685.211 Reasonable and affordable rehabilitation payments form.	This is the form that the new regulations require to be used by the Secretary and a guaranty agency to determine a borrower's request for a reasonable and affordable monthly rehabilitation payment of a defaulted loan.	OMB 1845–NEW1 This would be a new collection. A separate 60-day FEDERAL REGISTER notice will be published to solicit comment on the proposed form. The Department estimates that the burden would increase by 588,044 hours.	14,471,763.
§ 682.405(b) Loan rehabilitation agreement.	The proposed regulations would require the guaranty agency to base determinations of reasonable and affordable rehabilitation payment amounts of defaulted loans on information provided on an OMB-approved form, and if requested, supporting documentation.	OMB 1845–0020 The Department estimates that the burden would increase by 135,359 hours.	3,331,185.
§ 685.211(f) Loan rehabilitation agreement.	The proposed regulations would require the Secretary to base determinations of reasonable and affordable rehabilitation payment amounts of defaulted loans on information provided on an OMB-approved form, and if requested, supporting documentation.	OMB 1845–NEW2 The Department estimates that the burden would increase by 8,637 hours.	212,557.
§§§ 674.33, 682.402, 685.214 Closed school discharge form.	The proposed regulations would extend the current 90-day window to 120-days for students who leave before a school closes may apply for a discharge of a title IV, HEA loan.	OMB 1845–0015 ..... The Department estimates that the burden would increase by 54 hours.	1,329.

COLLECTION OF INFORMATION—Continued

Regulatory section	Information collection	OMB Control No. and estimated burden [change in burden]	Estimated costs
§ 674.19 School enrollment status reporting.	The proposed regulations would add a new section requiring institutions that participate in the Federal Perkins Loan program to, upon receipt of an enrollment report from the Secretary, update all information included in the report and return it to the Secretary in the manner and format and within the timeframe prescribed by the Secretary.	OMB 1845–0019 ..... The Department estimates that the burden would increase by 38,312 hours.	942,858.
§ 674.34 Deferment of repayment—Federal Perkins Loans.	The proposed regulations would require schools that participate in the Perkins Loan Program to use the same eligibility criteria that FFEL lenders and the Department use to define an eligible graduate fellowship program and to establish the eligibility of a Perkins Loan borrower for a graduate fellowship deferment.	OMB 1845–0019 ..... The Department estimates that the burden would increase by 276 hours.	13,585.
§ 682.410 Fiscal, administrative and enforcement requirements.	The proposed regulations would add a new section to specify the functions that may be performed by a third-party servicer or collection contractor employed by a guaranty agency (GA) for administrative wage garnishment (AWG) purposes; replace a section of the regulations with a new section to provide that if a borrower's written request for a hearing is received by the GA after the 30th day following the date of the garnishment notice and a decision is not rendered within 60 days following receipt of a borrower's written request the GA must suspend the AWG order beginning on the 61st day after the request was received until the hearing is provided and a decision rendered; provide for the manner by which the hearing is administered and certain provisions relating to bringing forth additional evidence and continuances; clarify that a borrower who wishes to object that they are not subject to garnishment because of recent reemployment after involuntary separation bears the burden of raising and proving the claim.	OMB 1845–0020 ..... The Department estimates that the burden would increase by 88,402 hours.	2,175,573.
§ 682.102 Obtaining and repaying a loan.	The proposed regulations would amend the section heading, remove the section of the regulations that describes the application process for FFEL loans, and re-designates the paragraphs describing the loan repayment process.	OMB 1845–0020 ..... The Department estimates that the burden would remain 325,058 hours.	No change.
§ 682.200 Definitions—Lender.	The proposed regulations make a conforming change to the definition of "Lender" due to the elimination of § 682.601.	OMB 1845–0020 ..... The Department estimates that the burden would remain 325,058 hours.	No change.
§ 682.205 Disclosure Requirements for Lenders.	Removes regulations governing required lender disclosures to borrowers that are provided when new loans are made. The remaining provisions include providing repayment information, providing required disclosures during the repayment period, and providing required disclosures for borrowers having difficulty making payments.	OMB 1845–0020 ..... The Department estimates that the burden would decrease by 162,529 hours to 162,529 hours.	−3,999,839.
§ 682.206 Due Diligence in making a loan.	The proposed regulations would remove § 682.206 from the FFEL regulations. The SAFRA Act eliminated the authority to make new FFEL Program loans, including FFEL consolidation loans.	OMB 1845–0020 ..... The Department estimates that the burden would decrease by 325,058 hours to 0 hours of burden.	−7,999,677.
§ 682.208 Due diligence in servicing a loan.	The proposed regulations would replace the term "national credit bureau(s)" with "nationwide consumer reporting agency(ies)" to more accurately reflect the appropriate legal terms.	OMB 1845–0020 ..... The Department estimates that the burden would remain 325,058 hours.	No change.

COLLECTION OF INFORMATION—Continued

Regulatory section	Information collection	OMB Control No. and estimated burden [change in burden]	Estimated costs
§ 682.209 Repayment of a loan.	The proposed regulations would amend § 682.209(a)(3)(i) by adding a new paragraph which specifies that borrowers with fixed interest rates on their Stafford loans enter repayment on those loans the day after six months following the date the borrower was no longer enrolled on at least a half-time basis. The proposed regulations would remove current §§ 682.209(e)–(g) and (j) from the regulations and re-designate the remaining paragraphs as paragraphs (e)–(g). Re-designated § 682.209(e) (current paragraph (h)) would be amended to specify that a FFEL Consolidation loan borrower repaying under the income-based repayment plan may make a scheduled monthly payment of less than the interest that accrues on the loan.	OMB 1845–0020 ..... The Department estimates that the burden would decrease from 325,058 by 65,012 hours to 260,046 hours.	−1,599,945.
§ 682.210 Deferment ...	The proposed regulations would amend the deferment regulations to provide that a borrower's representative may request a military service deferment on behalf of the borrower. In § 682.210(b), the introductory language would be revised to identify the cohort of borrowers to which each paragraph applies. Throughout § 682.210(b) cross-references would be added to the eligibility criteria that are applicable to deferments available to these borrowers. The proposed regulations would remove the exception clause at the end of the provision, and by replacing the words "military active" with the word "post-active".	OMB 1845–0020 ..... The Department estimates that the burden would remain 325,058 hours.	No change.
§ 682.211 Forbearance	Substantive changes in this section have been identified earlier. The additional proposed amendments to the regulations would allow a lender to grant forbearance to a borrower who is delinquent at the beginning of a period of non-mandatory authorized forbearance.	OMB 1845–0020 The Department estimates that the burden would remain 325,058 hours. (NOTE: Other earlier proposed changes increased burden by 9,446 hours for a total of 334,504 hours.).	No change.
§ 682.212 Prohibited transactions.	There is no change to the current language in this section of the regulations however the current burden referenced in OMB Control Number 1845–0020 is incorrect.	OMB 1845–0020 ..... The Department estimates that the burden would decrease by 325,058 hours to 0 hours of burden.	−7,999,677.
§ 682.214 Compliance with equal credit opportunity requirements.	The proposed regulations would remove § 682.214 from the FFEL regulations. The SAFRA Act ended the making of new FFEL loans and therefore these requirements can be eliminated from the FFEL regulations.	OMB 1845–0020 ..... The Department estimates that the burden would decrease by 325,058 hours to 0 hours of burden.	−7,999,677.
§ 682.216 Teacher loan forgiveness program.	The proposed regulations provide for minor language changes.	OMB 1845–0020 ..... The Department estimates that the burden would remain 325,058 hours.	No change.
§ 682.301 Eligibility of borrowers for interest benefits on Stafford and Consolidation Loans.	The proposed regulations would remove § 682.301(c) from the regulations. The SAFRA Act ended the making of new FFEL loans and this provision related to determining borrower eligibility for the interest subsidy on new loans would be eliminated.	OMB 1845–0020 ..... The Department estimates that the burden would decrease by 325,058 hours to 0 hours of burden.	−7,999,677.
§ 682.305 Procedures for payment of interest benefits and special allowance and collection of origination and loan fees.	Section 682.305(c)(1)(ii) specifies that, regardless of the dollar volume of loans originated or held, a school lender or an eligible lender serving as trustee for a school or school-affiliated organization originating FFEL loans as a lender must submit an independent compliance audit to the Department each year. The proposed regulations would remove the reference to FFEL lenders originating loans.	OMB 1845–0020 ..... The Department estimates that the burden would remain 325,058 hours.	No change.

COLLECTION OF INFORMATION—Continued

Regulatory section	Information collection	OMB Control No. and estimated burden [change in burden]	Estimated costs
§ 682.401 Basic Program Agreement.	The proposed regulations would remove from § 682.401 language addressing new loan originations, the process for loan origination, and a guaranty agency's efforts to secure new loan volume. These provisions can be eliminated from the FFEL regulations because no new FFEL loans are being made. The remaining provisions proposed for elimination relate to school eligibility to participate in a guaranty agency's program and the authority of an agency to limit, suspend, or terminate a school from its program. For purposes of new loans, schools now participate only in the Direct Loan Program. Any future actions to limit, suspend, or terminate a school's participation in the student loan programs will be undertaken by the Department under 34 CFR part 668, subpart G.	OMB 1845–0020 ..... The Department estimates that the burden of 325,058 hours would decrease by 32,506 to 292,552 hours.	−799,973.
§ 682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.	Substantive changes in this section have been identified earlier. There were no further changes to this section.	OMB 1845–0020 ..... The Department estimates that the burden would remain 325,058 hours.	No change.
§ 682.404 Federal reinsurance agreement.	The proposed regulations would make conforming language changes required due to the elimination of previous cross references or obsolete requirements.	OMB 1845–0020 ..... The Department estimates that the burden would remain 325,058 hours.	No change.
§ 682.405 Loan rehabilitation agreement.	Substantive changes in this section have been identified earlier. There were no further changes to this section.	OMB 1845–0020 ..... The Department estimates that the burden would remain 325,058 hours.	No change.
§ 682.406 Conditions for claim payments from the Federal Fund and for reinsurance coverage.	The proposed regulations would make a minor wording change due to the elimination of previous cross-references and add an ending date coinciding with the implementation of the SAFRA Act, which ended the making of new FFEL loans.	OMB 1845–0020 ..... The Department estimates that the burden would remain 325,058 hours.	No change.
§ 682.409 Mandatory assignment by guaranty agencies of defaulted loans to the Secretary.	The proposed regulations make no changes to this section of the regulations.	OMB 1845–0020 ..... The Department estimates that the burden would remain 325,058 hours.	No change.
§ 682.410 Fiscal, administrative, and enforcement requirements.	Apart from the earlier discussion of the changes made to the administrative wage garnishment provisions of this section of the regulations, the proposed regulations would only make minor wording changes to conform to cross reference changes and delete obsolete references.	OMB 1845–0020 The Department estimates that the burden would remain 325,058 hours. (NOTE: Other earlier proposed changes to the Administrative Wage Garnishment regulations increase burden by 88,402 hours for a total of 413,460 hours.).	No change.
§ 682.411 Lender due diligence in collecting guaranty agency loans.	The proposed regulations would make a minor wording change.	OMB 1845–0020 ..... The Department estimates that the burden would remain 325,058 hours.	No change.
§ 682.412 Consequences of the failure of a borrower or student to establish eligibility.	The proposed regulations would make a minor wording change.	OMB 1845–0020 ..... The Department estimates that the burden would remain 325,058 hours.	No change.
§ 682.414 Records, reports, and inspection requirements for guaranty agency programs.	The proposed regulations would make a minor wording change.	OMB 1845–0020 ..... The Department estimates that the burden would decrease from 325,058 hours by 16,253 hours for a total of 308,805 hours.	−399,986.
§ 682.417 Determination of Federal funds or assets to be returned.	The proposed regulations would make a minor wording change.	OMB 1845–0020 ..... The Department estimates that the burden would remain 325,058 hours.	No change.

COLLECTION OF INFORMATION—Continued

Regulatory section	Information collection	OMB Control No. and estimated burden [change in burden]	Estimated costs
§ 682.418 Prohibited uses of the assets of the Operating Fund during periods in which the Operating Fund contains transferred funds owed to the Federal Fund.	The proposed regulations would remove § 682.418 from the FFEL regulations.	The Department estimates that the burden would decrease by 325,058 hours to 0 hours of burden.	−7,999,677.
§ 682.421 Funds transferred from the Federal Fund to the Operating Fund by a guaranty agency.	The proposed regulations would remove § 682.421 from the FFEL regulations.	OMB 1845–0020 ..... The Department estimates that the burden would decrease by 325,058 hours to 0 hours of burden.	−7,999,677.
§ 682.507 Due diligence in collecting a loan.	The proposed regulations would remove all of the regulations under subpart E (§§ 682.500 through 682.515) and reserve the subpart.	OMB 1845–0020 ..... The Department estimates that the burden would decrease by 325,058 hours to 0 hours of burden.	−7,999,677.
§ 682.508 Assignment of a loan.	The proposed regulations would remove all of the regulations under subpart E (§§ 682.500 through 682.515) and reserve the subpart.	OMB 1845–0020 ..... The Department estimates that the burden would decrease by 325,058 hours to 0 hours of burden.	−7,999,677.
§ 682.511 Procedures for filing a claim.	The proposed regulations would remove all of the regulations under subpart E (§§ 682.500 through 682.515) and reserve the subpart.	OMB 1845–0020 ..... The Department estimates that the burden would decrease by 325,058 hours to 0 hours of burden.	−7,999,677.
§ 682.515 Records, reports, and inspection requirements for Federal GSL program lenders.	The proposed regulations would remove all of the regulations under subpart E (§§ 682.500 through 682.515) and reserve the subpart.	OMB 1845–0020 ..... The Department estimates that the burden would decrease by 325,058 hours to 0 hours of burden.	−7,999,677.
§ 682.602 Rules for a school or school-affiliated organization that makes or originates loans through an eligible lender trustee.	The proposed regulations would remove § 682.602 from the FFEL regulations.	OMB 1845–0020 ..... The Department estimates that the burden would decrease by 325,058 hours to 0 hours of burden.	−7,999,677.
§ 682.603 Certification by a school that participated in connection with a loan application.	The proposed regulations would make conforming language changes required due to the elimination of a cross reference and reorganization due to a deletion of previous requirements.	OMB 1845–0020 ..... The Department estimates that the burden would remain 325,058 hours.	No change.
§ 682.604 Processing the borrower's loan proceeds and counseling borrowers (Required exit counseling for borrowers).	The proposed regulations would remove, reserve, and redesignate paragraphs to illustrate the counseling requirements, specifically the exit counseling requirements.	OMB 1845–0020 ..... The Department estimates that the burden would decrease from 325,058 by 211,288 hours for a total of 113,770 hours.	−5,199,798.
§ 682.605 Determining the date of a student's withdrawal.	The Secretary is not proposing to change the language in this section.	OMB 1845–0020 ..... The Department estimates that the burden would remain 325,058 hours.	No change.
§ 682.610 Administrative and fiscal requirements for schools that participated.	The proposed regulations would only make minor wording changes.	OMB 1845–0020 ..... The Department estimates that the burden would remain 325,058 hours.	No change.
§ 682.711 Reinstatement after termination.	The proposed regulations remove the language regarding the loss of a school lender's participation upon the loss of the school's eligibility to participate in the Title IV, Federal student financial assistance programs.	OMB 1845–0020 ..... The Department estimates that the burden would remain 325,058 hours.	No change.
§ 682.712 Disqualification review of limitation, suspension, and termination actions taken by guarantee agencies against lenders.	The proposed regulations would remove a cross-reference to a section proposed for deletion.	OMB 1845–0020 ..... The Department estimates that the burden would remain 325,058 hours.	No change.

COLLECTION OF INFORMATION—Continued

Regulatory section	Information collection	OMB Control No. and estimated burden [change in burden]	Estimated costs
§ 682.713 Disqualification review of limitation, suspension, and termination actions taken by guaranty agencies against a school.	The proposed regulations would remove § 682.713 from the FFEL regulations.	OMB 1845–0020 ..... The Department estimates that the burden would decrease by 325,058 hours to 0 hours of burden.	−7,999,677.

The total burden hours and change in burden hours associated with each OMB Control number affected by these proposed regulations follows:

Control number	Total proposed burden hours	Proposed change in burden hours
1845–0015	14,828	+54
1845–0019	6,247,152	+38,864
1845–0020	8,197,127	−4,155,077
1845–NEW1	588,044	+588,044
1845–NEW2	8,165	+8,165
Total	15,055,316	−3,519,950

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.

Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

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

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

(Catalog of Federal Domestic Assistance Numbers: 84.032 Federal Family Education Loan Program; 84.038 Federal Perkins Loan Program; 84.268 William D. Ford Federal Direct Loan Program)

List of Subjects in 34 CFR Parts 668, 674, 682, and 685

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: June 27, 2013.

Arne Duncan,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend title 34 of the Code of Federal Regulations chapter VI as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

■ 1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1070(g), 1085, 1088, 1091, 1092, 1094, 1099c, and 1099c–1, unless otherwise noted.

§ 668.204 [Amended]

■ 2. Section 668.204(c)(1)(i) is amended by removing the figure ''0.06015'' and adding, in its place, the figure ''0.0832''.

§ 668.214 [Amended]

■ 3. Section 668.214 is amended by:

■ A. In paragraph (a)(1), removing the figure ''0.06015'' and adding, in its place, the figure ''0.0832''.

■ B. In paragraph (d)(2), removing the words ''0.06015 or 0.0625'' and adding, in their place, the words ''0.0832 or 0.0625, as applicable''.

PART 674—FEDERAL PERKINS LOAN PROGRAM

■ 4. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1070g, 1087aa–1087hh, unless otherwise noted.

■ 5. Section 674.2(b) is amended by revising the definition of ''Satisfactory repayment arrangement'' to read as follows:

§ 674.2 Definitions.

* * * * *

(b) * * *

Satisfactory repayment arrangement: (1) For purposes of regaining eligibility for grant, loan, or work assistance under

title IV of the HEA, to the extent that the borrower is otherwise eligible, the making of six on-time, consecutive, voluntary, full monthly payments on a defaulted loan. ''On-time'' means a payment made within 20 days of the scheduled due date. A borrower may obtain the benefit of this paragraph with respect to renewed eligibility once.

(2) Voluntary payments are payments made directly by the borrower, and do not include payments obtained by income tax offset, garnishment, or income or asset execution.

(3) A borrower has not used the one opportunity to renew eligibility for title IV assistance if the borrower makes six consecutive, on-time, voluntary, full monthly payments under an agreement to rehabilitate a defaulted loan, but does not receive additional title IV assistance prior to defaulting on that loan again.

* * * * *

■ 6. Section 674.9 is amended by:

■ A. In paragraph (j)(1), removing the word ''those''.

■ B. Redesignating paragraph (k) as paragraph (l).

■ C. Adding a new paragraph (k).

The addition reads as follows:

§ 674.9 Student eligibility.

* * * * *

(k) In the case of a borrower who is in default on an FFEL Program or a Direct Loan Program loan, makes satisfactory repayment arrangements as defined in 34 CFR 682.200(b) or 685.102(b) on the defaulted loan, as determined by the loan holder; and

* * * * *

■ 7. Section 674.19 is amended by adding a new paragraph (f) to read as follows:

§ 674.19 Fiscal procedures and records.

* * * * *

(f) *Enrollment reporting process.* (1) Upon receipt of an enrollment report from the Secretary, an institution must update all information included in the report and return the report to the Secretary—

(i) In the manner and format prescribed by the Secretary; and

(ii) Within the timeframe specified by the Secretary.

(2) Unless it expects to submit its next updated enrollment report to the Secretary within the next 60 days, an institution must notify the Secretary within 30 days after the date the school discovers that—

(i) A loan under title IV of the HEA was made to a student who was enrolled or accepted for enrollment at the institution, and the student has ceased to be enrolled on at least a half-time basis or failed to enroll on at least a half-time basis for the period for which the loan was intended; or

(ii) A student who is enrolled at the institution and who received a loan under title IV of the HEA has changed his or her permanent address.

* * * * *

■ 8. Section 674.33 is amended by:

■ A. Revising paragraph (g)(4)(i)(B).

■ B. In paragraph (g)(8)(i), removing the figure ''90'' and adding, in its place, the figure ''120''.

The revision reads as follows:

§ 674.33 Repayment.

* * * * *

(g) * * *

(4) * * *

(i) * * *

(B) Did not complete the program of study at that school because the school closed while the student was enrolled, or the student withdrew from the school not more than 120 days before the school closed. The Secretary may extend the 120-day period if the Secretary determines that exceptional circumstances related to the school's closing justify an extension. Exceptional circumstances for this purpose may include, but are not limited to: The school's loss of accreditation; the school's discontinuation of the majority of its academic programs; action by the State to revoke the school's license to operate or award academic credentials in the State; or a finding by a State or Federal government agency that the school violated State or Federal law; and

* * * * *

■ 9. Section 674.34 is amended by:

■ A. In the introductory text of paragraph (e), removing the reference ''(e)(5)'' and adding, in its place, the reference ''(e)(4)'', each time it appears.

■ B. Removing paragraph (e)(4).

■ C. Redesignating paragraph (e)(5) as paragraph (e)(4).

■ D. Removing paragraph (e)(6).

■ E. Redesignating paragraphs (e)(7) and (e)(8) as paragraphs (e)(5) and (e)(6), respectively.

■ F. In newly redesignated paragraph (e)(5), removing the words ''paragraphs (e)(3) and (e)(4)'' and adding, in their place, the words ''paragraph (e)(3)''.

■ G. Removing paragraph (e)(9).

■ H. Revising paragraph (f) to read as follows:

§ 674.34 Deferment of repayment—Federal Perkins loans, NDSLs and Defense loans.

* * * * *

(f)(1) To qualify for a deferment for study as part of a graduate fellowship program pursuant to paragraph (b)(1)(ii) of this section, a borrower must provide the institution with a statement from an authorized official of the borrower's graduate fellowship program certifying—

(i) That the borrower holds at least a baccalaureate degree conferred by an institution of higher education;

(ii) That the borrower has been accepted or recommended by an institution of higher education for acceptance on a full-time basis into an eligible graduate fellowship program; and

(iii) The borrower's anticipated completion date in the program.

(2) For purposes of paragraph (b)(1)(ii) of this section, an eligible graduate fellowship program is a fellowship program that—

(i) Provides sufficient financial support to graduate fellows to allow for full-time study for at least six months;

(ii) Requires a written statement from each applicant explaining the applicant's objectives before the award of that financial support;

(iii) Requires a graduate fellow to submit periodic reports, projects, or evidence of the fellow's progress; and

(iv) In the case of a course of study at a foreign university, accepts the course of study for completion of the fellowship program.

* * * * *

■ 10. Section 674.39 is amended by revising paragraph (a)(2) to read as follows:

§ 674.39 Loan rehabilitation.

(a) * * *

(2) A loan is rehabilitated if the borrower—

(i) Requests rehabilitation; and

(ii) Makes a full monthly payment—as determined by the institution—within 20 days of the due date, each month for 9 consecutive months.

* * * * *

§ 674.50 [Amended]

■ 11. Section 674.50(e)(1) is amended by removing the words ''is submitted for assignment under 674.8(d)(3)'' and adding, in their place, the words ''was made before September 13, 1982''.

■ 12. Section 674.52 is amended by:

■ A. Removing paragraph (b)(2).

■ B. Redesignating paragraph (b)(1)(i) as paragraph (b)(1).

■ C. Redesignating paragraph (b)(1)(ii) as paragraph (b)(2).

■ D. Redesignating paragraphs (c), (d), and (e) as paragraphs (d), (e), and (f), respectively.

■ E. Adding a new paragraph (c).

■ F. Adding a new paragraph (g).

The additions read as follows:

§ 674.52 Cancellation procedures.

* * * * *

(c) *Break in service.* (1) If the borrower is unable to complete an academic year of eligible teaching service due to a condition that is covered under the Family and Medical Leave Act of 1993 (FMLA) (29 U.S.C. 2601, *et seq.*), the borrower still qualifies for the cancellation if—

(i) The borrower completes one half of the academic year; and

(ii) The borrower's employer considers the borrower to have fulfilled his or her contract requirements for the academic year for purposes of salary increases, tenure, and retirement.

(2) If the borrower is unable to complete a year of eligible service under §§ 674.56, 674.57, 674.59, or 674.60 due to a condition that is covered under the FMLA, the borrower still qualifies for the cancellation if the borrower completes at least six consecutive months of eligible service.

* * * * *

(g) *Switching cancellation categories.* A borrower who qualifies for a cancellation under one of the cancellation categories in §§ 674.53, 674.56, 674.57, or 674.59 receives cancellation of 15 percent of the original principal for the first and second years of qualifying service, 20 percent of the original principal for the third and fourth years of qualifying service, and 30 percent of the original principal for the fifth year of qualifying service. If, after the first, second, third, or fourth complete year of qualifying service—

(1) The borrower switches to a position that qualifies the borrower for cancellation under a different cancellation category under §§ 674.53, 674.56, 674.57, or 674.59, the borrower's cancellation rate progression continues from the last year the borrower received a cancellation under the former cancellation category; or

(2) The borrower switches to a position that qualifies the borrower for cancellation under a different cancellation category under §§ 674.58 or 674.60, the borrower's cancellation rate progression under the new cancellation category begins at the year one cancellation rates specified in §§ 674.58(b) or 674.60(b), respectively.

* * * * *

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

■ 13. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

■ 14. Section 682.100 is amended by:

■ A. Revising the introductory text of paragraph (a).

■ B. In paragraph (a)(1), removing the word ''encourages'' and adding, in its place, the word ''encouraged''.

■ C. In the first sentence of paragraph (a)(3), removing the word ''encourages'' and adding, in its place, the word ''encouraged''.

■ D. Revising the last sentence of paragraph (a)(3).

■ E. In paragraph (a)(4), removing the word ''encourages'' and adding, in its place, the word ''encouraged''.

■ F. In paragraph (a)(4), adding the words ''and prior to July 1, 2010'' in the last sentence between the date ''November 13, 1997'' and the punctuation ''.''.

■ G. Revising paragraph (b)(2)(iii).

The revisions read as follows:

§ 682.100 The Federal Family Education Loan programs.

(a) This part governs the following four programs collectively referred to in these regulations as ''the Federal Family Education Loan (FFEL) programs,'' in which lenders used their own funds prior to July 1, 2010, to make loans to enable a student or his or her parents to pay the costs of the student's attendance at postsecondary schools.

* * * * *

(3) * * * The PLUS Program also provided for making loans to graduate and professional students on or after July 1, 2006 and prior to July 1, 2010.

* * * * *

(b) * * *

(2) * * *

(iii) The Federal GSL programs were authorized to operate in States not served by a guaranty agency program. In addition, the FISL and Federal SLS (as in effect for periods of enrollment that began prior to July 1, 1994) programs were authorized, under limited circumstances, to operate in States in which a guaranty agency program did not serve all eligible students.

* * * * *

■ 15. Section 682.101 is amended by:

■ A. Adding introductory text to this section.

■ B. In paragraph (a), removing the words ''may make loans.'' and adding, in their place, the words ''made loans prior to July 1, 2010.''

■ C. In paragraph (b), removing the words ''may participate'' and adding, in their place, the word ''participated''.

■ D. Revising paragraph (c).

The addition and revision read as follows:

§ 682.101 Participation in the FFEL programs.

The following entities and persons participate in the FFEL programs:

* * * * *

(c) Students who met certain requirements, including enrollment at a participating school, borrowed under the Stafford Loan Program prior to July 1, 2010 and, for periods of enrollment that began prior to July 1, 1994, the SLS program. Parents of eligible dependent undergraduate students borrowed under the PLUS Program prior to July 1, 2010. Borrowers with outstanding Stafford, SLS, FISL, Perkins, HPSL, HEAL, ALAS, PLUS, or Nursing Student Loan Program loans borrowed under the Consolidation Loan Program prior to July 1, 2010. The PLUS Program also provided for making loans to graduate and professional students on or after July 1, 2006 and prior to July 1, 2010.

* * * * *

■ 16. Section 682.102 is amended by:

■ A. Revising the section heading.

■ B. Removing paragraphs (a), (c), and (d).

■ C. In the introductory text of paragraph (e), removing the paragraph heading.

■ D. Redesignating paragraphs (e)(1) through (e)(7) as paragraphs (a) through (g), respectively.

■ E. In newly redesignated paragraph (a), revising the last sentence.

■ F. In newly redesignated paragraph (b), removing the words ''on a Stafford Loan''.

The revisions read as follows:

§ 682.102 Repaying a loan.

(a) * * * The obligation to repay all or a portion of a loan may be forgiven for Stafford Loan borrowers who enter certain areas of the teaching profession.

* * * * *

§ 682.103 [Amended]

■ 17. Section 682.103(c) is amended by removing the letter and the punctuation ''E,''.

■ 18. Section 682.200 is amended by:

■ A. In paragraph (a)(1) introductory text, removing the words ''subpart A of''.

■ B. In paragraph (a)(1), removing from the list, the terms *Academic Competitiveness Grant (ACG) Program, Graduate and professional student, Leveraging Educational Assistance Partnership (LEAP) Program, National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) Program, Supplemental Educational Opportunity Grant (SEOG) Program,* and *Supplemental Loans for Students (SLS) Program.*

■ C. In paragraph (a)(1), adding to the list, in alphabetical order, the terms *Federal Supplemental Educational Opportunity Grant (SEOG) Program, Federal Supplemental Loans for*

Students (SLS) Program, and *Graduate or professional student.*

■ D. In paragraph (b), in the definition of *Authority,* removing the words ''making or purchasing'' and adding, in their place, the word ''purchase''.

■ E. In paragraph (b), in the definition of *Borrower,* removing the word ''is'' and adding, in its place, the word ''was''.

■ F. In paragraph (b), in the definition of *Estimated financial assistance,* in paragraph (1)(vi), removing the words ''Academic Competitiveness Grant, National SMART Grant,''.

■ G. In paragraph (b), in the definition of *Lender,* revising paragraphs (5)(i)(A)(*10*) and 8.

■ H. In paragraph (b), revising the definition of *Nationwide consumer reporting agency.*

■ I. In paragraph (b), revising the definition of *Satisfactory repayment arrangement.*

The revisions read as follows:

§ 682.200 Definitions.

* * * * *

(b) * * *

Lender

* * * * *

(5) * * *

(i) * * *

(A) * * *

(*10*) Performance of, or payment to another third party to perform, any school function required under title IV, except that the lender may perform entrance counseling and, as provided in § 682.604(a), exit counseling, and may provide services to participating foreign schools at the direction of the Secretary, as a third-party servicer; and

* * * * *

(8) As of January 1, 2007, and for loans first disbursed on or after that date under a trustee arrangement, an eligible lender operating as a trustee under a contract entered into on or before September 30, 2006, and which continues in effect with a school or a school-affiliated organization—

(i) Must not—

(A) Make a loan to any undergraduate student;

(B) Make a loan other than a Federal Stafford loan to a graduate or professional student; or

(C) Make a loan to a borrower who is not enrolled at that school;

(ii) Must offer loans that carry an origination fee or an interest rate, or both, that are less than the fee or rate authorized under the provisions of the Act; and

(iii) Must, for any fiscal year beginning on or after July 1, 2006 in which the school engages in activities as an eligible lender, submit an annual compliance audit that satisfies the following requirements:

(A) With regard to a school that is a governmental entity or a nonprofit organization, the audit must be conducted in accordance with § 682.305(c)(2)(v) and chapter 75 of title 31, United States Code, and in addition, during years when the student financial aid cluster (as defined in Office of Management and Budget Circular A–133, Appendix B, Compliance Supplement) is not audited as a ''major program'' (as defined under 31 U.S.C. 7501) must, without regard to the amount of loans made, include in such audit the school's lending activities as a major program.

(B) With regard to a school that is not a governmental entity or a nonprofit organization, the audit must be conducted annually in accordance with § 682.305(c)(2)(i) through (iii).

(C) With regard to any school, the audit must include a determination that—

(*1*) The school used all payments and proceeds (i.e., special allowance and interest payments from borrowers, interest subsidy payments, proceeds from the sale or other disposition of loans) from the loans for need-based grant programs;

(*2*) Those need-based grants supplemented, rather than supplanted, the institution's use of non-Federal funds for such grants; and

(*3*) The school used no more than a reasonable portion of payments and proceeds from the loans for direct administrative expenses.

* * * * *

Nationwide consumer reporting agency. A consumer reporting agency that compiles and maintains files on consumers on a nationwide basis and as defined in 15 U.S.C. 1681a(p).

* * * * *

Satisfactory repayment arrangement. (1) For purposes of regaining eligibility under the title IV student financial assistance programs, the making of six consecutive, on-time, voluntary full monthly payments on a defaulted loan. A borrower may only obtain the benefit of this paragraph with respect to renewed eligibility once.

(2) The required full monthly payment amount may not be more than is reasonable and affordable based on the borrower's total financial circumstances. Voluntary payments are payments made directly by the borrower, and do not include payments obtained by income tax off-set, garnishment, or income or asset execution. ''On-time'' means a payment received by the Secretary or a guaranty agency or its agent within 20 days of the scheduled due date.

(3) A borrower has not used the one opportunity to renew eligibility for title IV assistance if the borrower makes six consecutive, on-time, voluntary full monthly payments under an agreement to rehabilitate a defaulted loan but does not receive additional title IV assistance prior to defaulting on that loan again.

* * * * *

§ 682.201 [Amended]

■ 19. Section 682.201 is amended by:

■ A. In paragraph (a) introductory text, removing the words ''made under § 682.209(e) or (f)''.

■ B. In paragraph (a)(4)(ii) introductory text, adding the words ''paragraph (a)(4) of'' between the words ''of'' and ''this''.

■ C. In paragraph (a)(6) introductory text, removing the word ''student'' and adding, in its place, the word ''borrower''.

■ D. In paragraph (c)(2)(i), removing the words ''credit bureau'' and adding, in their place, the words ''consumer reporting agency''.

■ 20. Section 682.202 is amended by:

■ A. Revising paragraphs (a)(1)(i), (a)(1)(ii) introductory text, (a)(1)(iii), (a)(1)(iv), (a)(1)(v), and (a)(1)(vi) introductory text.

■ B. In paragraph (a)(1)(vii) introductory text, removing the first occurrence of the word ''is'' and adding, in its place, the word ''was''.

■ C. In paragraph (a)(1)(viii) introductory text, removing the first occurrence of the word ''is'' and adding, in its place, the word ''was''.

■ D. In paragraph (a)(1)(ix), removing the first occurrence of the word ''is'' and adding, in its place, the word ''was''.

■ E. In paragraph (a)(1)(x) introductory text, removing the word ''is'' and adding, in its place, the word ''was''.

■ F. Removing paragraphs (a)(1)(x)(D) and (a)(1)(x)(E).

■ G. In paragraph (a)(2)(ii) introductory text, removing the words ''loan made under § 682.209(e) or (f)'' and adding, in their place, the words ''refinanced PLUS loan''.

■ H. In paragraph (a)(2)(iv) introductory text, removing the first occurrence of the word ''is'' and adding, in its place, the word ''was''.

■ I. In paragraph (a)(2)(v) introductory text, removing the first occurrence of the word ''is'' and adding, in its place, the word ''was''.

■ J. In paragraph (a)(3)(ii) introductory text, removing the words ''loan made under § 682.209(e) or (f)'' and adding, in their place, the words ''refinanced SLS loan''.

■ K. In paragraph (a)(4)(iv) introductory text, adding the words ''and prior to July

1, 2010'' after the date ''1998'' and before the punctuation '',''.

■ L. In paragraph (a)(4)(v), adding the words ''and prior to July 1, 2010'' after the date ''1997'' and before the punctuation '',''.

■ M. In paragraph (a)(7)(iii)(A), removing the citation ''(a)(6)(ii)'' and adding, in its place, the citation ''(a)(7)(i)''.

■ N. In paragraph (b)(1), adding the words ''or Federal default fees'' between the words ''premiums'' and ''to''.

■ O. Removing paragraph (c)(1)(vi).

■ P. Redesignating paragraph (c)(1)(vii) as paragraph (c)(1)(vi)''.

■ Q. In paragraphs (c)(5), (c)(6), and the introductory text of paragraph (c)(7), removing the word ''Shall'' and adding, in its place, the words ''A lender must''.

■ R. In paragraph (c)(7)(iv), removing the words ''in accordance with § 682.207(b)(1)(ii)(B) and (C)''.

■ S. In paragraph (d)(2), removing the words '', other than an SLS or PLUS loan refinanced under § 682.209(e) or (f)'' and adding, in their place, the words ''and prior to July 1, 2010''.

■ T. Removing paragraph (e).

■ U. Redesignating paragraphs (f) through (h) as paragraphs (e) through (g), respectively.

■ V. In newly redesignated paragraph (e)(1), removing the citation ''(f)(2)'' and adding, in its place, the citation ''(e)(2)''.

■ W. In newly redesignated paragraph (f)(1)(i), removing the punctuation and letter ''s''.

■ X. In newly redesignated paragraph (f)(2), removing the citation ''(g)(1)'' and adding, in its place, the citation ''(f)(1)''.

The revisions read as follows:

§ 682.202 Permissible charges by lenders to borrowers.

* * * * *

(a) * * *

(1) * * *

(i) For loans made prior to July 1, 1994, if the borrower, on the date the promissory note evidencing the loan was signed, had an outstanding balance of principal or interest on a previous Stafford loan, the interest rate is the applicable interest rate on that previous Stafford loan.

(ii) If the borrower, on the date the promissory note evidencing the loan was signed, had no outstanding balance on any FFEL Program loan, and the first disbursement was made—

* * * * *

(iii) For a Stafford loan for which the first disbursement was made before October 1, 1992—

(A) If the borrower, on the date the promissory note was signed, had no outstanding balance on a Stafford loan but had an outstanding balance of principal or interest on a PLUS or SLS loan made for a period of enrollment beginning before July 1, 1988, or on a Consolidation loan that repaid a loan made for a period of enrollment beginning before July 1, 1988, the interest rate is 8 percent; or

(B) If the borrower, on the date the promissory note evidencing the loan was signed, had an outstanding balance of principal or interest on a PLUS or SLS loan made for a period of enrollment beginning on or after July 1, 1988, or on a Consolidation loan that repaid a loan made for a period of enrollment beginning on or after July 1, 1988, the interest rate is 8 percent until 48 months elapse after the repayment period begins, and 10 percent thereafter.

(iv) For a Stafford loan for which the first disbursement was made on or after October 1, 1992, but before December 20, 1993, if the borrower, on the date the promissory note evidencing the loan was signed, had no outstanding balance on a Stafford loan but had an outstanding balance of principal or interest on a PLUS, SLS, or Consolidation loan, the interest rate is 8 percent.

(v) For a Stafford loan for which the first disbursement was made on or after December 20, 1993 and prior to July 1, 1994, if the borrower, on the date the promissory note was signed, had no outstanding balance on a Stafford loan but had an outstanding balance of principal or interest on a PLUS, SLS, or Consolidation loan, the interest rate is the rate provided in paragraph (a)(1)(ii)(B) of this section.

(vi) For a Stafford loan for which the first disbursement was made on or after July 1, 1994 and prior to July 1, 1995, for a period of enrollment that included or began on or after July 1, 1994, the interest rate is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

* * * * *

■ 21. Section 682.204 is amended by:

■ A. In paragraph (a) introductory text, removing the words ''Federal Direct Stafford/Ford'' and adding, in their place, the words ''Direct Subsidized''.

■ B. In paragraphs (a)(i) and (a)(1)(ii), removing the words ''$2,625, or, for a loan disbursed on or after July 1, 2007, $3,500,'' and adding, in their place, the figure ''$3,500''.

■ C. Revising paragraph (a)(1)(iii).

■ D. In paragraph (a)(2) introductory text, removing the words ''Federal Direct Stafford/Ford'' and adding, in their place, the words ''Direct Subsidized''.

■ E. In paragraphs (a)(2)(i) and (a)(2)(ii), removing the words ''$3,500, or, for a loan disbursed on or after July 1, 2007, $4,500,'' and adding, in their place, the figure ''$4,500''.

■ F. In paragraph (a)(3) introductory text, removing the words ''Federal Direct Stafford/Ford'' and adding, in their place, the words ''Direct Subsidized''.

■ G. Revising paragraph (a)(5).

■ H. In paragraph (a)(6) introductory text and paragraph (a)(7), removing the words ''Federal Direct Stafford/Ford'' and adding, in their place, the words ''Direct Subsidized''.

■ I. In paragraph (b) introductory text, removing the words ''Federal Direct Stafford/Ford'', and adding, in their place, the words ''Direct Subsidized''.

■ J. Revising paragraph (c)(1).

■ K. Revising paragraph (c)(2).

■ L. In paragraph (d) introductory text, removing the word ''additional'' that appears after the word ''borrow''.

■ M. In paragraph (d) introductory text, removing the words ''Federal Direct Unsubsidized Stafford/Ford'' and adding, in their place, the words ''Direct Unsubsidized''.

■ N. In paragraphs (d)(1)(i), (d)(1)(ii), (d)(2)(i), and (d)(2)(ii), removing the words ''$4,000, or, for a loan first disbursed on or after July 1, 2008, $6,000,'' and adding, in their place, the figure ''$6,000''.

■ O. Revising paragraph (d)(1)(iii).

■ P. In paragraphs (d)(3)(i) and (d)(3)(ii), removing the words ''$5,000, or, for a loan first disbursed on or after July 1, 2008, $7,000,'' and adding, in their place, the figure ''$7,000''.

■ Q. In paragraph (d)(5), removing the words ''$10,000, or, for a loan disbursed on or after July 1, 2007,''.

■ R. In paragraph (d)(6)(i), removing the words ''$4,000, or, for a loan first disbursed on or after July 1, 2008, $6,000,'' and adding, in their place, the figure ''$6,000''.

■ S. In paragraph (d)(6)(ii), removing the words ''$5,000, or, for a loan disbursed on or after July 1, 2007, $7,000,'' and adding, in their place, the figure ''$7,000''.

■ T. In paragraph (d)(6)(iii), removing the words ''$5,000, or, for a loan disbursed on or after July 1, 2007,''.

■ U. Revising paragraph (e).

■ V. Removing paragraph (f).

■ W. Redesignating paragraphs (g) through (m) as paragraphs (f) through (l), respectively.

■ X. In newly redesignated paragraph (l), removing the citation ''(d), (e), and (f)'' and adding, in its place, the citation ''(d), and (e)''.

The revisions read as follows:

§ 682.204 Maximum loan amounts.

(a) * * *

(1) * * *

(iii) For a program of study that is less than a full academic year in length, the amount that is the same ratio to $3,500 as the lesser of the—

Number of semester, trimester, quarter, or clock hours enrolled

Number of semester, trimester, quarter, or clock hours in academic year or Number of weeks enrolled

Number of weeks in academic year

* * * * *

(5) In the case of a graduate or professional student, the total amount the student may borrow for loans made prior to July 1, 2010 for any academic year of study under the Stafford Loan Program, in combination with any amount borrowed under the Direct Subsidized Loan Program, may not exceed $8,500.

* * * * *

(c) * * *

(1) Except for a dependent undergraduate student who qualifies for additional Unsubsidized Stafford Loan funds because the student's parents are unable to borrow under the PLUS Loan Program, as described in paragraph (d) of this section, the total amount the dependent undergraduate student may borrow for any academic year under the Unsubsidized Stafford Loan Program in combination with the Direct Unsubsidized Loan Program is the same amount determined under paragraph (a) of this section, less any amount received under the Stafford Loan Program or the Direct Subsidized Loan program, plus—

(i) $2,000, for a program of study of at least a full academic year in length.

(ii) For a program of study that is at least one academic year or more in length with less than a full academic year remaining, the amount that is the same ratio to $2,000 as the—

Number of semester, trimester, quarter, or clock hours enrolled

Number of semester, trimester, quarter, or clock hours in academic year

(iii) For a program of study that is less than a full academic year in length, the amount that is the same ratio to $2,000 as the lesser of the—

Number of semester, trimester, quarter, or clock hours enrolled

Number of semester, trimester, quarter, or clock hours in academic year or Number of weeks enrolled

Number of weeks in academic year

(2) In the case of an independent undergraduate student, a graduate or professional student, or certain dependent undergraduate students under the conditions specified in § 682.201(a)(3), the total amount the student may borrow for any period of enrollment under the Unsubsidized Stafford Loan and Direct Unsubsidized Loan programs may not exceed the amounts determined under paragraph (a) of this section less any amount received under the Federal Stafford Loan Program or the Direct Subsidized Loan Program, in combination with the amounts determined under paragraph (d) of this section.

(d) * * *

(1) * * *

(iii) For a program of study that is less than a full academic year in length, an amount that is the same ratio to $6,000 as the lesser of—

Number of semester, trimester, quarter, or clock hours enrolled

Number of semester, trimester, quarter, or clock hours in academic year or Number of weeks enrolled

Number of weeks in academic year

* * * * *

(e) *Combined Federal Stafford, SLS and Federal Unsubsidized Stafford Loan Program aggregate limits.* The aggregate unpaid principal amount of Stafford Loans, Direct Subsidized Loans, Unsubsidized Stafford Loans, Direct Unsubsidized Loans and SLS Loans, but excluding the amount of capitalized interest, may not exceed the following:

(1) $31,000 for a dependent undergraduate student.

(2) $57,500 for an independent undergraduate student or a dependent undergraduate student under the conditions specified in § 682.201(a)(3).

(3) $138,500 for a graduate or professional student.

* * * * *

■ 22. Section 682.205 is amended by:

■ A. Removing paragraphs (a), (b), (g), and (i).

■ B. Redesignating paragraphs (c), (d), (e), (f), (h), and (j) as paragraphs (a), (b), (c), (d), (e), and (f), respectively.

■ C. In newly redesignated paragraph (a)(1), removing the citation ''(c)(2)'' and adding, in its place, the citation ''(a)(2)''.

■ D. In newly redesignated paragraph (a)(3) introductory text, removing the citation ''(c)(1)'' and adding, in its place, the citation ''(a)(1)''.

■ E. Revising newly redesignated paragraph (a)(4).

■ F. In newly redesignated paragraph (a)(5)(ii), adding the word ''business'' after the word ''five''.

■ G. In newly redesignated paragraph (b), removing the parenthetical ''(c)'' and adding, in its place, the parenthetical ''(a)''.

■ H. In newly redesignated paragraph (e)(2), removing the citation ''(h)(1)'' and adding, in its place, the citation ''(e)(1)''.

The revision reads as follows:

§ 682.205 Disclosure requirements for lenders.

* * * * *

(a) * * *

(4) *Required disclosures for borrowers having difficulty making payments.* (i) Except as provided in paragraph (a)(4)(ii) of this section, the lender must provide a borrower who has notified the lender that he or she is having difficulty making payments with—

(A) A description of the repayment plans available to the borrower, and how the borrower may request a change in repayment plan;

(B) A description of the requirements for obtaining forbearance on the loan and any costs associated with forbearance; and

(C) A description of the options available to the borrower to avoid default and any fees or costs associated with those options.

(ii) A disclosure under paragraph (a)(4)(i) of this section is not required if the borrower's difficulty has been resolved through contact with the borrower resulting from an earlier disclosure or other communication between the lender and the borrower.

* * * * *

§ 682.206 [Removed]

■ 23. Remove § 682.206.

§ 682.207 [Removed]

■ 24. Remove § 682.207.

§ 682.208 [Amended]

■ 25. Section 682.208 is amended by:

■ A. In paragraph (a), removing the words ''national credit bureaus'' and adding, in their place, the words ''nationwide consumer reporting agencies''.

■ B. In paragraph (b)(1) introductory text, removing the words ''at least one national credit bureau'' and adding, in their place, the words ''each nationwide consumer reporting agency''.

■ C. In paragraph (b)(2), removing the words ''at least one national credit bureau'' and adding, in their place, the words ''each nationwide consumer reporting agency''.

■ D. In paragraph (b)(3) introductory text, removing both occurrences of the words ''credit bureau'' and adding, in their place, the words ''consumer reporting agency''.

■ E. In paragraph (b)(3)(i)(A), removing the words ''credit bureau'' and adding,

in their place, the words ''consumer reporting agency''.

■ F. In paragraph (e)(3), removing the citation ''§ 682.401(b)(17)(ii)'' and adding, in its place, the citation ''§ 682.401(b)(8)(ii)''.

■ G. In paragraph (g), removing the citation ''§ 682.411(g)'' and adding, in its place, the citation ''§ 682.411(h)''.

■ 26. Section 682.209 is amended by:

■ A. In paragraph (a)(3)(i)(B), removing the word ''and''.

■ B. In paragraph (a)(3)(i)(C), removing the punctuation ''.'' and adding, in its place, the punctuation and the word ''; and''.

■ C. Adding a new paragraph (a)(3)(i)(D).

■ D. In paragraph (a)(3)(ii)(E), removing the citation ''§ 682.205(c)(1)'' and adding, in its place, the citation ''§ 682.205(a)(1)''.

■ E. In paragraph (b)(2)(ii), revising the last sentence.

■ F. Removing paragraphs (e), (f), (g), and (j).

■ G. Redesignating paragraphs (h), (i), and (k) as paragraphs (e), (f), and (g), respectively.

■ H. In newly redesignated paragraph (e)(3) introductory text, removing the citation ''(h)'' and adding, in its place, the citation ''(e)''.

■ I. In newly redesignated paragraph (e)(4)(ii), removing the word ''Must'' and adding, in its place, the words ''Except in the case of an income-based repayment schedule, must''.

■ J. In newly redesignated paragraph (e)(5), removing the citation ''(h)'' and adding, in its place, the citation ''(e)''.

■ K. In newly redesignated paragraph (f)(2)(i), removing the words ''under § 682.209(f)''.

■ L. In newly redesignated paragraph (f)(2)(ii), removing the citation ''(i)(2)(i)'' and adding, in its place, the citation ''(f)(2)(i)''.

The addition and revision read as follows:

§ 682.209 Repayment of a loan.

■ (a) * * *

■ (3) * * *

■ (i) * * *

(D) For a borrower with a loan for which the applicable interest rate is fixed at 6.0 percent per year, 5.6 percent per year, or 6.8 percent per year, the day after 6 months following the date on which the borrower is no longer enrolled on at least a half-time basis at an institution of higher education;

* * * * *

■ (b) * * *

■ (2) * * *

(ii) * * * Information related to next scheduled payment due date need not be provided to borrowers making such prepayments while in an in-school, grace, deferment, or forbearance period when payments are not due.

* * * * *

■ 27. Section 682.210 is amended by:

■ A. In paragraph (a)(4), adding the words and punctuation '', or the borrower's representative for purposes of paragraphs (i) and (t) of this section,'' between the words ''borrower'' and ''must''.

■ B. Revising paragraph (b).

■ C. In paragraph (n)(1) introductory text and in paragraph (n)(2), removing the citation ''(b)(2)(v)'' and adding, in its place, the citation ''(b)(3)(iv)''.

■ D. In paragraph (o)(1) introductory text, adding the parenthetical ''(i)'' between the parenthetical ''(3)'' and the word ''of''.

■ E. In paragraph (q)(1) introductory text, removing the citation ''(b)(5)(ii)'' and adding, in its place, the citation ''(b)(3)(iii)''.

■ F. In paragraph (r)(1) introductory text, removing the citation ''(b)(5)(iv)'' and adding, in its place, the citation ''(b)(3)(v)''.

■ G. In paragraph (s)(2), removing the punctuation and the words '', except that the borrower is not required to obtain a Stafford or SLS loan for the period of enrollment covered by the deferment''.

■ H. In paragraph (s)(6) introductory text, removing both occurrences of the citation ''(s)(6)(vi)'' and adding, in their place, the citation ''(s)(6)(iv)''.

■ I. In paragraph (u)(5), removing both occurrences of the words ''military active'' and adding, in their place, the words ''post-active''.

The revision reads as follows:

§ 682.210 Deferment.

* * * * *

(b) *Authorized deferments for borrowers prior to July 1, 1993.* (1) *For all borrowers who are not new borrowers on or after July 1, 1993.* Deferment is authorized for a FFEL borrower during any period when the borrower is—

(i) Except as provided in paragraph (b)(4) of this section, engaged in full-time study at a school in accordance with paragraph (c) of this section;

(ii) Engaged in a course of study under an eligible graduate fellowship program in accordance with paragraph (d) of this section;

(iii) Engaged in a rehabilitation training program for disabled individuals in accordance with paragraph (e) of this section;

(iv) Temporarily totally disabled in accordance with paragraph (f) of this section, or unable to secure employment because the borrower is caring for a spouse or other dependent who is disabled and requires continuous nursing or similar services for up to three years in accordance with paragraph (g) of this section; or

(v) Conscientiously seeking, but unable to find, full-time employment in the United States, for up to two years, in accordance with paragraph (h) of this section.

(2) *For all Stafford and SLS borrowers who are not new borrowers on or after July 1, 1993, and for parent PLUS loans made before August 15, 1983.* Deferment is authorized during any period when the borrower is—

(i) On active duty status in the United States Armed Forces in accordance with paragraph (i) of this section, or an officer in the Commissioned Corps of the United States Public Health Service in accordance with paragraph (j) of this section, for up to three years (including any period during which the borrower received a deferment authorized under paragraph (b)(3)(ii) of this section);

(ii) A full-time volunteer under the Peace Corps Act, for up to three years, in accordance with paragraph (k) of this section;

(iii) A full-time volunteer under title I of the Domestic Volunteer Service Act of 1973 (ACTION programs), for up to three years, in accordance with paragraph (l) of this section;

(iv) A full-time volunteer for a tax-exempt organization, for up to three years, in accordance with paragraph (m) of this section; or

(v) Engaged in an internship or residency program, in accordance with paragraph (n) of this section, for up to two years (including any period during which the borrower received a deferment authorized under paragraph (b)(3)(iv) of this section).

(3) *For new Stafford or SLS borrowers on or after July 1, 1987 but before July 1, 1993.* Deferment is authorized—

(i) In accordance with paragraph (o) of this section, if the borrower has been enrolled on at least a half-time basis at an institution of higher education during the six months preceding the beginning of the deferment, for a period of up to six months during which the borrower is—

(A)(*1*) Pregnant;

(*2*) Caring for his or her newborn child; or

(*3*) Caring for a child immediately following the placement of the child with the borrower before or immediately following adoption; and

(B) Not attending a school or gainfully employed;

(ii) During a period when the borrower is on active duty status in the National Oceanic and Atmospheric Administration Corps, for up to three

years, in accordance with paragraph (p) of this section, (including any period during which the borrower received a deferment authorized under paragraph (b)(2)(i) of this section);

(iii) During a period of up to three years when the borrower is serving as a full-time teacher in a public or non-profit private elementary or secondary school in a teacher shortage area designated by the Secretary under paragraph (q) of this section;

(iv) During a period when the borrower is engaged in an internship or residency program, for up to two years, in accordance with paragraph (n) of this section, (including any period during which the borrower received a deferment authorized under paragraph (b)(2)(v) of this section); or

(v) When a mother who has preschool-age children (i.e., children who have not enrolled in first grade) and who is earning not more than $1 per hour above the Federal minimum wage, for up to 12 months of employment, and who began that full-time employment within one year of entering or re-entering the work force, in accordance with paragraph (r) of this section. Full-time employment involves at least 30 hours of work a week and it is expected to last at least 3 months.

(4) *For new Stafford or SLS borrowers on or after July 1, 1987.* Deferment is authorized during periods when the borrower is engaged in at least half-time study at a school in accordance with paragraph (b) of this section.

(5) *For new parent PLUS borrowers on or after July 1, 1987 and before July 1, 1993.* Deferment is authorized during any period when a student on whose behalf the parent borrower received the loan—

(i) Is not independent as defined in section 480(d) of the Act; and

(ii) Meets the conditions and provides the required documentation, for any of the deferments described in paragraphs (b)(1)(i) through (iii) and (b)(4) of this section.

(6) *Definition of a new borrower.* For purposes of paragraphs (b)(3), (b)(4), and (b)(5) of this section, a ''new borrower'' with respect to a loan is a borrower who, on the date he or she signs the promissory note, has no outstanding balance on—

(i) A Stafford, SLS, or PLUS loan made prior to July 1, 1987 for a period of enrollment beginning prior to July 1, 1987; or

(ii) A Consolidation loan that repaid a loan made prior to July 1, 1987 and for a period of enrollment beginning prior to July 1, 1987.

* * * * *

■ 28. Section 682.211 is amended by:

■ A. In paragraph (a)(4), removing the parenthetical ''(10)'' and adding, in its place, the parenthetical ''(11)''.

■ B. Revising paragraphs (c) and (d).

■ C. In paragraph (f)(2), removing the words ''or an administrative forbearance period as specified under paragraph (f)(11) or (i)(2) of this section;'' and adding, in their place, the words ''or an authorized period of forbearance;''.

■ D. In paragraph (f)(6), removing the words ''credit bureau'' and adding, in their place, the words ''consumer reporting agency''.

■ E. In paragraph (h)(2)(ii)(B), removing the words ''10 U.S.C. 2171; or'' and adding, in their place, the words ''10 U.S.C. 2171, 2173, 2174 or any other student loan repayment programs administered by the Department of Defense; or''.

■ F. In paragraph (h)(2)(ii)(C), removing the citation ''§ 682.215'' and adding, in its place, the citation ''§ 682.216''.

■ G. In paragraph (h)(4)(iii)(A), removing the citation ''§ 682.215(c)'' and adding, in its place the citation ''§ 682.216(c)''.

■ H. In paragraph (h)(4)(iii)(B), removing the citation ''§ 682.215(c)'' and adding, in its place the citation ''§ 682.216(c)''.

The revisions read as follows:

§ 682.211 Forbearance.

* * * * *

(c) Except as provided in paragraph (d)(2) of this section, a lender may grant forbearance for a period of up to one year at a time if both the borrower or endorser and an authorized official of the lender agree to the terms of the forbearance. If the borrower or endorser requests the forbearance orally and the lender and the borrower or endorser agree to the terms of the forbearance orally, the lender must notify the borrower or endorser of the terms within 30 days of that agreement.

(d)(1) A guaranty agency may authorize a lender to grant forbearance to permit a borrower or endorser to resume honoring the agreement to repay the debt after default but prior to claim payment. The forbearance agreement in this situation must include a new agreement to repay the debt signed by the borrower or endorser or a written or oral affirmation of the borrower's or endorser's obligation to repay the debt.

(2) If the forbearance is based on the borrower's or endorser's oral request and affirmation of the obligation to repay the debt—

(i) The forbearance period is limited to a period of 120 days;

(ii) Such a forbearance cannot be granted consecutively;

(iii) The lender must orally review with the borrower the terms and conditions of the forbearance, including the consequences of interest capitalization, and other repayment options available to the borrower; and

(iv) The lender must send a notice to the borrower or endorser, as provided in paragraph (c) of this section, that confirms the terms of the forbearance and the borrower's or endorser's affirmation of the obligation to repay the debt, and retain a record of the terms of the forbearance and affirmation in the borrower's or endorser's file.

(3) For purposes of this section, an ''affirmation'' means an acknowledgement of the loan by the borrower or endorser in a legally binding manner. The form of the affirmation may include, but is not limited to, the borrower's or endorser's—

(i) New signed repayment agreement or schedule, or another form of signed agreement to repay the debt;

(ii) Oral acknowledgment and agreement to repay the debt documented by the lender in the borrower's or endorser's file and confirmed by the lender in a notice to the borrower; or

(iii) A payment made on the loan by the borrower or endorser.

* * * * *

§ 682.214 [Removed]

■ 29. Remove § 682.214.

■ 30. Section 682.216 is amended by:

■ A. In paragraph (a)(2)(iii), removing the first occurrence of the word ''at'' and adding, in its place, the word ''for''.

■ B. In paragraph (a)(4)(i), removing the second occurrence of the word ''at'' and adding, in its place, the word ''for''.

■ C. In paragraph (c)(1) introductory text, removing the words ''at an educational'' and adding, in their place, the words ''for an educational''.

■ D. In paragraph (c)(1)(iii), removing the final sentence.

■ E. Redesignating paragraphs (c)(2) through (c)(11) as paragraphs (c)(3) through (c)(12), respectively.

■ F. Adding a new paragraph (c)(2).

■ G. In newly redesignated paragraph (c)(4)(ii)(A), removing the words ''at an eligible educational'' and adding, in their place, the words ''for an eligible educational''.

■ H. In newly redesignated paragraph (c)(4)(ii)(B), adding the words ''for an'' immediately before the words ''educational service agency''.

■ I. In newly redesignated paragraph (c)(4)(iii), removing the first occurrence of the word ''at'' and adding, in its place, the word ''for''.

■ J. In newly redesignated paragraph (c)(5)(i), adding the words ''for an''

immediately before the words ''educational service''.

■ K. In newly redesignated paragraph (c)(5)(ii)(A), removing the words ''students at an eligible'' and adding, in their place, the words ''students for an eligible''.

■ L. In newly redesignated paragraph (c)(5)(ii)(B), adding the words ''for an'' immediately before the words ''educational service''.

■ M. In newly redesignated paragraph (c)(5)(iii), removing the first occurrence of the word ''at'' and adding, in its place the word ''for''.

■ N. In newly redesignated paragraph (c)(10), removing the second occurrence of the word ''at'' and adding, in its place, the word ''for''.

■ O. In paragraph (e) introductory text, removing the word ''discharge'' and adding in its place, the word ''forgiveness''.

■ P. In paragraph (e)(1)(i), removing the citation ''(h)(3)(iii)'' and adding, in its place, the citation ''(h)(4)(iii)''.

■ Q. In paragraph (e)(1)(iii), removing the word ''discharge'' and adding, in its place, the word ''forgiveness''.

■ R. Revising paragraphs (f)(2)(i) and (f)(2)(ii).

■ S. In paragraph (f)(2)(iii), removing both occurrences of the word ''discharged'' and adding, in their place, the words ''loan forgiveness''.

■ T. In paragraph (f)(3)(ii), removing both occurrences of the word ''discharge'' and adding, in their place, the words ''loan forgiveness''.

■ U. In paragraph (f)(4), removing both occurrences of the word ''discharge'' and adding, in their place, the words ''loan forgiveness''.

■ V. In paragraph (f)(5), removing the word ''discharge''.

■ W. Revising paragraph (g).

The additions and revisions read as follows:

§ 682.216 Teacher loan forgiveness program.

* * * * *

(c) * * *

(2) The Secretary considers all elementary and secondary schools operated by the Bureau of Indian Education (BIE) or operated on Indian reservations by Indian tribal groups under contract with the BIE to qualify as schools serving low-income students.

* * * * *

(f) * * *

(2) * * *

(i) The holder must file a request for payment with the guaranty agency on a teacher loan forgiveness amount no later than 60 days after the receipt, from the borrower, of a completed teacher loan forgiveness application.

(ii) When filing a request for payment on a teacher loan forgiveness, the holder must provide the guaranty agency with the completed loan forgiveness application submitted by the borrower and any required supporting documentation.

* * * * *

(g) *Claims for reimbursement from the Secretary on loans held by guaranty agencies.* In the case of a teacher loan forgiveness applied to a defaulted loan held by the guaranty agency, the Secretary pays the guaranty agency a percentage of the amount forgiven that is equal to the complement of the reinsurance percentage paid on the loan. The payment of up to $5,000, or up to $17,500, may also include interest that accrues on the forgiveness amount during the period from the date on which the guaranty agency received payment from the Secretary on a default claim to the date on which the guaranty agency determines that the borrower is eligible for the teacher loan forgiveness.

* * * * *

§ 682.300 [Amended]

■ 31. Section 682.300 is amended by:

■ A. In paragraph (b)(2)(ii) introductory text, removing the words '', except as provided in paragraph (c)(4) of this section''.

■ B. In paragraph (b)(2)(ii)(B), removing the words ''in accordance with § 682.207(b)(1)(ii)(B) and (C)''.

■ C. In paragraph (c)(1), adding the word ''or'' after the punctuation '';''.

■ D. In paragraph (c)(2), removing the punctuation '';'' and adding, in its place, the punctuation ''.''.

■ E. Removing paragraphs (c)(3) and (c)(4).

§ 682.301 [Amended]

■ 32. Section 682.301 is amended by removing paragraph (c).

■ 33. Section 682.302 is amended by:

■ A. In paragraph (b)(3) introductory text, adding the words ''and prior to July 1, 2010'' after the date ''1992'' and before the punctuation ''.''.

■ B. In paragraph (d)(1)(vi)(B), removing the words ''the loan proceeds disbursed by electronic funds transfer or master check in accordance with § 682.207(b)(1)(ii)(B) and (C)'' and adding, in their place, the words ''The loan proceeds disbursed by electronic funds transfer or master check''.

■ C. In paragraph (d)(2) introductory text, adding the words ''and prior to July 1, 2010'' after the date ''1992'' and before the punctuation ''.''.

■ D. In paragraph (e)(1)(i), removing the citation ''§ 682.800'' and adding, in its place, the words ''section 438(e) of the Act''.

■ E. Revising paragraph (f)(3)(viii)(B).

■ F. In paragraph (f)(3)(x)(B)(*3*), removing the figure ''503'' and adding, in its place, the figure ''501''.

The revision reads as follows:

§ 682.302 Payment of special allowance on FFEL loans.

* * * * *

(f) * * *

(3) * * *

(viii) * * *

(B) Fees are reasonable and customary for purposes of paragraph (f)(3)(viii) of this section, if they do not exceed the amounts received by the trustee for similar services with regard to similar portfolios of loans of that State or non-profit entity or its related special purpose entity that are not eligible to receive special allowance at the rate established under paragraph (f)(2) of this section, or if they do not exceed an amount as determined by such other method requested by the State or non-profit entity that the Secretary considers reliable.

* * * * *

§ 682.305 [Amended]

■ 34. Section 682.305 is amended by:

■ A. In paragraph (a)(3)(ii)(B), by adding the words ''and prior to July 1, 2010'' after the date ''2007'' and before the punctuation ''.''.

■ B. In paragraph (c)(1)(i), removing the words ''originating or''.

■ C. Removing paragraph (c)(1)(ii).

■ D. Redesignating paragraph (c)(1)(iii) as paragraph (c)(1)(ii).

■ E. In paragraph (c)(2)(iv), adding the word ''and'' as the last word in the paragraph, immediately following the punctuation '';''.

■ F. In paragraph (c)(2)(v), removing the final punctuation '';'' and adding, in its place, the punctuation ''.''.

■ G. Removing paragraphs (c)(2)(vi) and (c)(2)(vii).

■ 35. Section 682.400 is amended by revising paragraph (b)(1)(i) to read as follows:

§ 682.400 Agreements between a guaranty agency and the Secretary.

* * * * *

(b) * * *

(1) * * *

(i) Borrowers whose Stafford or Consolidation loans are guaranteed by the agency may qualify for interest benefits that are paid to the lender on the borrower's behalf under 34 CFR 682.301; and

* * * * *

■ 36. Section 682.401 is amended by:

■ A. Removing paragraphs (b)(1), (b)(2), and (b)(3).

■ B. Redesignating paragraph (b)(4) as paragraph (b)(1).

■ C. In newly redesignated paragraph (b)(1) introductory text, removing the citation ''(b)(4)'' and adding, in its place, the citation ''(b)(1)''.
■ D. Removing paragraphs (b)(5) and (b)(6).
■ E. Redesignating paragraph (b)(7) as paragraph (b)(2).
■ F. Removing paragraphs (b)(8) and (b)(9).
■ G. Redesignating paragraphs (b)(10) and (b)(11) as paragraphs (b)(3) and (b)(4), respectively.
■ H. In newly redesignated paragraph (b)(3)(i) introductory text, removing the words ''SLS or PLUS loans refinanced under § 682.209(e) or (f)'' and adding, in their place, the words ''refinanced SLS or PLUS loans''.
■ I. In newly redesignated paragraph (b)(3)(iv)(C), adding the words ''and prior to July 1, 2010'' between the date ''2006'' and the punctuation ''.''.
■ J. In newly redesignated paragraph (b)(3)(vi)(B)(*4*), removing the words ''in accordance with § 682.207(b)(1)(ii)(B) and (C)''.
■ K. Removing paragraphs (b)(12) and (b)(13).
■ L. Redesignating paragraphs (b)(14) through (b)(29) as paragraphs (b)(5) through (b)(20), respectively.
■ M. In newly redesignated paragraph (b)(6), adding the words ''and N'' between the letter ''M'' and the word ''of''.
■ N. In newly redesignated paragraph (b)(8)(i) introductory text, removing the parenthetical ''(17)'' and adding, in its place, the parenthetical ''(8)''.
■ O. In newly redesignated paragraph (b)(8)(iii), removing the parenthetical ''(17)'' and adding, in its place, the parenthetical ''(8)''.
■ P. In newly redesignated paragraph (b)(10)(i)(B), removing the words ''School and lender'' and adding, in their place, the word ''Lender''.
■ Q. In newly redesignated paragraph (b)(10)(i)(C), removing the words ''school and''.
■ R. In newly redesignated paragraph (b)(10)(i)(D), removing the words ''school or''.
■ S. In newly redesignated paragraph (b)(11) introductory text, adding the word ''of'' between the words ''days'' and ''any''.
■ T. In newly redesignated paragraph (b)(14)(ii), removing the parenthetical ''(23)'' and adding, in its place, the parenthetical ''(14)''.
■ U. In newly redesignated paragraph (b)(18)(i), removing the word ''Federal'' and adding, in its place, the word ''Direct''.
■ V. In newly redesignated paragraph (b)(18), removing paragraph (b)(18)(ii).
■ W. In newly redesignated paragraph (b)(18), redesignating paragraphs (b)(18)(iii) through (v) as paragraphs (b)(18)(ii) through (iv), respectively.
■ X. Revising newly redesignated paragraph (b)(18)(iii).
■ Y. Removing paragraph (c).
■ Z. Redesignating paragraph (d) as paragraph (c).
■ AA. In newly redesignated paragraph (c)(2), removing the parenthetical ''(d)'' and adding, in its place, the parenthetical ''(c)''.
■ BB. In newly redesignated paragraph (c)(3), adding a final sentence to the end of the paragraph.
■ CC. In newly redesignated paragraph (c), removing paragraph (c)(4).
■ DD. In newly redesignated paragraph (c), redesignating paragraphs (c)(5) and (c)(6) as paragraphs (c)(4) and (c)(5), respectively.
■ EE. Removing paragraph (e).
■ FF. Redesignating paragraphs (f) and (g) as paragraphs (d) and (e), respectively.
■ GG. In newly redesignated paragraph (d)(2), removing the word ''HEA'' and adding, in its place, the word ''Act''.
■ HH. In newly redesignated paragraph (e)(1), removing the word ''participate'' and adding, in its place, the word ''participated''.
■ II. In newly redesignated paragraph (e)(2), removing the parenthetical ''(g)'' and adding, in its place, the parenthetical ''(e)''.
■ JJ. In newly redesignated paragraph (e)(4), removing the parenthetical ''(g)'' and adding, in its place, the parenthetical ''(e)''.

The revision and addition read as follows:

§ 682.401 Basic program agreement.

* * * * *

(b) * * *

(18) * * *

(iii) On or after October 1, 2009, when returning proceeds to the Secretary from the consolidation of a defaulted loan that is paid off with excess consolidation proceeds as defined in paragraph (b)(18)(iv) of this section, a guaranty agency must remit the entire amount of collection costs repaid through the consolidation loan.

* * * * *

(c) * * *

(3) * * * Each loan made under an MPN is enforceable in accordance with the terms of the MPN and is eligible for claim payment based on a true and exact copy of such MPN.

* * * * *

■ 37. Section 682.402 is amended by:
■ A. In paragraph (a)(5)(ii), removing the words ''credit bureau'' and adding, in their place, the words ''consumer reporting agency''.
■ B. Revising paragraph (d)(1)(i).
■ C. In paragraph (d)(3)(ii)(B), by removing the figure ''90'' and adding, in its place, the figure ''120''.
■ D. Except for paragraphs (d)(6)(ii)(G)(*1*) and (d)(6)(ii)(G)(*2*), in paragraph (d)(6), by removing the figure ''90'' each time it appears and adding, in its place, the figure ''120''.
■ E. In paragraph (d)(7)(iv), removing the words ''credit bureaus'' and adding, in their place, the words ''consumer reporting agencies''.
■ F. In paragraph (d)(8)(i), removing the citation ''34 CFR 685.213'' and adding, in its place, the citation ''34 CFR 685.214''.
■ G. In paragraph (e)(3) introductory text, removing the parenthetical ''(14)'' and adding, in its place, the parenthetical ''(15)''.
■ H. In paragraph (e)(3)(v)(C), removing the word ''identify'' and adding, in its place, the word ''identity''.
■ I. In paragraph (e)(12)(v) introductory text, removing the words ''credit bureaus'' and adding, in their place, the words ''consumer reporting agencies''.
■ J. In paragraphs (l)(1), (l)(2)(ii), and (l)(3)(i), adding the words ''or Federal default fees'' between the word ''premiums'' and the punctuation '')''.
■ K. In paragraph (n)(2), adding the words ''or Federal default fees'' between the word ''premiums'' and the punctuation '')''.

The revision reads as follows:

§ 682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.

* * * * *

(d) * * *

(1) * * *

(i) The Secretary reimburses the holder of a loan received by a borrower on or after January 1, 1986, and discharges the borrower's obligation with respect to the loan in accordance with the provisions of paragraph (d) of this section, if the borrower (or the student for whom a parent received a PLUS loan) could not complete the program of study for which the loan was intended because the school at which the borrower (or student) was enrolled closed, or the borrower (or student) withdrew from the school not more than 120 days prior to the date the school closed. The Secretary may extend the 120-day period if the Secretary determines that exceptional circumstances related to a school's closing justify an extension. Exceptional circumstances for this purpose may include, but are not limited to: The school's loss of accreditation; the school's discontinuation of the majority of its academic programs; action by the

State to revoke the school's license to operate or award academic credentials in the State; or a finding by a State or Federal government agency that the school violated State or Federal law.

* * * * *

§ 682.403 [Removed]

■ 38. Remove § 682.403.

■ 39. Section 682.404 is amended by:

■ A. Revising paragraph (b)(3)(ii).

■ B. In paragraph (b)(3)(iii), adding the word ''or'' after the punctuation '';''.

■ C. In paragraph (b)(4)(ii)(G)(*2),* removing the words ''is consistent with § 682.509(a)(1)'' and adding, in their place, the words ''addresses the condition identified in paragraph (b)(3)(ii) of this section''.

■ D. In paragraph (d)(1) introductory text, removing the words ''made under § 682.209(e), (f) and (h),'' and adding, in their place the words ''that were refinanced pursuant to section 428B(e)(2) and (3) of the Act,''.

■ E. Removing paragraph (h).

■ F. Redesignating paragraphs (i) through (l) as paragraphs (h) through (k), respectively.

■ G. In newly redesignated paragraph (j)(3)(i), removing the parenthetical ''(k)(2)(i)'' and adding, in its place, the parenthetical ''(j)(2)(i)''.

■ H. In newly resdesignated paragraph (j)(3)(ii), removing the parenthetical ''(k)(2)(ii)'' and adding, in its place, the parenthetical ''(j)(2)(ii)''.

The revision reads as follows:

§ 682.404 Federal reinsurance agreement.

* * * * *

(b) * * *

(3) * * *

(ii) Under a policy established by the agency that addresses instances in which, for a non-school originated loan, a lender learns that the school terminated its teaching activities while a student was enrolled during the academic period covered by the loan;

* * * * *

■ 40. Section 682.405 is amended by:

■ A. In the introductory text of paragraph (a)(2)(i), adding the word ''qualifying'' between the words ''ten'' and ''payments''.

■ B. Revising the introductory text of paragraph (a)(2)(i)(A).

■ C. Redesignating paragraph (a)(3) as paragraph (a)(4).

■ D. Adding a new paragraph (a)(3).

■ E. Revising paragraph (b)(1).

The revisions and addition read as follows:

§ 682.405 Loan rehabilitation agreement.

(a) * * *

(2) * * *

(i) * * *

(A) A qualifying payment is—

* * * * *

(3)(i) If a borrower's loan is being collected by administrative wage garnishment while the borrower is also making monthly payments on the same loan under a loan rehabilitation agreement, the guaranty agency must continue collecting the loan by administrative wage garnishment until the borrower makes five qualifying monthly payments under the rehabilitation agreement. After the borrower makes the fifth qualifying monthly payment, the guaranty agency must, unless otherwise directed by the borrower, suspend collecting the loan by administrative wage garnishment.

(ii) A borrower may only obtain the benefit of a suspension of administrative wage garnishment while also attempting to rehabilitate a defaulted loan once.

* * * * *

(b) * * *

(1) A borrower may request rehabilitation of the borrower's defaulted loan held by the guaranty agency. In order to be eligible for rehabilitation of the loan, the borrower must voluntarily make at least 9 of the 10 payments required under a monthly repayment agreement.

(i) Each of which payment is—

(A) Made voluntarily;

(B) In the full amount required;

(C) Received within 20 days of the due date for the payment; and

(D) Reasonable and affordable.

(ii) All 9 payments are received within a 10-month period that begins with the month in which the first required due date falls and ends with the ninth consecutive calendar month following that month.

(iii) For the purposes of this section, the borrower's reasonable and affordable payment amount, as determined by the guaranty agency or its agents, is based solely on information provided on a form approved by the Secretary and, if requested, supporting documentation from the borrower and other sources, and considers—

(A) The borrower's, and if applicable, the spouse's current disposable income, including public assistance payments, and other income received by the borrower and the spouse, such as welfare benefits, Social Security benefits, Supplemental Security Income, and workers' compensation. Spousal income is not considered if the spouse does not contribute to the borrower's household income;

(B) Family size as defined in § 682.215(a)(3); and

(C) Reasonable and necessary expenses, which include—

(*1*) Food;

(*2*) Housing;

(*3*) Utilities;

(*4*) Basic communication expenses;

(*5*) Necessary medical and dental costs;

(*6*) Necessary insurance costs;

(*7*) Transportation costs;

(*8*) Dependent care and other work-related expenses;

(*9*) Legally required child and spousal support;

(*10*) Other title IV and non-title IV student loan payments; and

(*11*) Other expenses approved by the Secretary.

(iv) The reasonable and affordable payment amount must not be—

(A) A required minimum loan payment amount (e.g., $50) if the agency determines that a smaller amount is reasonable and affordable;

(B) A percentage of the borrower's total loan balance; or

(C) Based on other criteria unrelated to the borrower's total financial circumstances.

(v) Within 15 business days of its determination of the borrower's reasonable and affordable payment amount, the guaranty agency must provide the borrower with a written rehabilitation agreement which includes the borrower's reasonable and affordable payment amount, a prominent statement that the borrower may object orally or in writing to the reasonable and affordable payment amount, with the method and timeframe for raising such an objection, and an explanation of any other terms and conditions applicable to the required series of payments that must be made before the borrower's account can be considered for repurchase by an eligible lender (i.e., rehabilitated). The agency may not impose any other conditions unrelated to the amount or timing of the rehabilitation payments in the rehabilitation agreement. The written rehabilitation agreement must inform the borrower of—

(A) The effects of having the loans rehabilitated (e.g., removal of the record of default from the borrower's credit history and return to normal repayment); and

(B) The amount of any collection costs to be added to the unpaid principal of the loan when the loan is sold to an eligible lender, which may not exceed 18.5 percent of the unpaid principal and accrued interest on the loan at the time of the sale.

(vi) If the borrower objects to the monthly payment amount determined under paragraph (b)(1)(iii) of this section, the guaranty agency must recalculate the payment amount. The guaranty agency must follow the

monthly payment calculation rules in § 682.215(b)(1) to determine a borrower's recalculated reasonable and affordable payment amount, except that if the recalculated amount under § 682.215(b)(1) is less than $5, the borrower's recalculated monthly rehabilitation payment is $5. The guaranty agency must provide the borrower with a new written rehabilitation agreement confirming the borrower's recalculated reasonable and affordable payment amount within the timeframe specified in paragraph (b)(1)(v) of this section.

(vii) If the borrower objects to the monthly payment amount determined under paragraph (b)(1)(iii) of this section, but does not provide the documentation required to calculate a monthly payment amount under § 682.215(b)(1), no rehabilitation agreement exists between the borrower and the guaranty agency, and the rehabilitation does not proceed.

(viii) The agency must include any payment made under § 682.401(b)(1) in determining whether the 9 out of 10 payments required under paragraph (b)(1) of this section have been made.

(ix) A borrower may request that the monthly payment amount be adjusted due to a change in the borrower's total financial circumstances only upon providing the documentation specified in paragraph (b)(1)(iii) of this section.

(x) During the rehabilitation period, the guaranty agency must limit contact with the borrower on the loan being rehabilitated to collection activities that are required by law or regulation and to communications that support the rehabilitation.

* * * * *

§ 682.406 [Amended]

■ 41. Section 682.406 is amended by:

■ A. In paragraph (a)(2)(ii), removing the words ''in accordance with § 682.207(b)(1)(ii)(B) and (C)''.

■ B. In paragraph (a)(12)(iv), adding the words ''and prior to July 1, 2010'' after the date ''1999'' and before the punctuation ''.''.

§ 682.407 [Amended]

■ 42. Section 682.407(e)(1)(ii) is amended by removing the figure ''24'' the first time it appears and adding, in its place, the figure ''72''.

§ 682.408 [Removed]

■ 43. Remove § 682.408.

§ 682.409 [Amended]

■ 44. Section 682.409 is amended by:

■ A. In paragraph (a)(2)(i), removing the citation ''§ 682.401(b)(4)'' and adding, in its place, the citation ''§ 682.401(b)(1)''.

■ B. In paragraph (a)(3)(i)(B), removing the citation ''§ 682.401(b)(4)'' and adding, in its place, the citation ''§ 682.401(b)(1)''.

■ 45. Section 682.410 is amended by:

■ A. Revising the introductory text of paragraph (a)(2).

■ B. In paragraph (a)(2)(ii) introductory text, removing the word ''preclaims'' and adding, in its place, the words ''default aversion''.

■ C. In paragraph (b)(2) introductory text, removing the citation ''§ 682.401(b)(27)'' and adding, in its place, the citation ''§ 682.401(b)(18)(i)''.

■ D. In paragraph (b)(5)(i) introductory text, removing the parenthetical ''(b)(6)(v)'' and adding, in its place, the parenthetical ''(b)(6)(ii)''.

■ E. In paragraph (b)(7)(i), removing the words ''conditions described in § 682.509(a)(1)'' and adding, in their place, the words ''condition described in § 682.404(b)(3)(ii)''.

■ F. In paragraph (b)(7)(ii)(A), removing the words ''credit bureau'' and adding, in their place, the words ''consumer reporting agency''.

■ G. Revising paragraph (b)(9).

■ H. In paragraph (c)(1)(i)(A) introductory text, removing the words ''made or''.

■ I. In paragraph (c)(1)(i)(A)(*1*), removing the words ''in that year''.

■ J. In paragraph (c)(1)(i)(A)(*2*), removing the words ''in that year''.

■ K. Revising paragraph (c)(1)(i)(C).

■ L. In paragraph (c)(1)(ii), adding the parenthetical ''(i)'' between the parenthetical ''(1)'' and the parenthetical ''(A)''.

■ M. Removing paragraph (c)(4).

■ N. Redesignating paragraphs (c)(5) through (c)(11) as paragraphs (c)(4) through (c)(10), respectively.

■ O. In newly redesignated paragraphs (c)(8)(i) and (c)(8)(ii), adding the words ''title IV eligibility of a'' between the words ''or'' and ''school''.

■ P. Revising newly redesignated paragraph (c)(10) introductory text.

The revisions read as follows:

§ 682.410 Fiscal, administrative, and enforcement requirements.

(a) * * *

(2) *Uses of reserve fund assets.* A guaranty agency may use the assets of the reserve fund established under paragraph (a)(1) of this section to pay only—

* * * * *

(b) * * *

(9) *Administrative garnishment.* (i) If a guaranty agency decides to garnish the disposable pay of a borrower who is not making payments on a loan held by the agency, on which the Secretary has paid a reinsurance claim, it must do so in accordance with the following procedures:

(A) At least 30 days before the initiation of garnishment proceedings, the guaranty agency must mail to the borrower's last known address, a written notice described in paragraph (b)(9)(i)(B) of this section.

(B) The notice must describe—

(*1*) The nature and amount of the debt;

(*2*) The intention of the agency to collect the debt through deductions from disposable pay;

(*3*) An explanation of the borrower's rights;

(*4*) The deadlines by which a borrower must exercise those rights; and

(*5*) The consequences of failure to exercise those rights in a timely manner.

(C) The guaranty agency must offer the borrower an opportunity to inspect and copy agency records related to the debt.

(D) The guaranty agency must offer the borrower an opportunity to enter into a written repayment agreement with the agency under terms agreeable to the agency.

(E)(*1*) The guaranty agency must offer the borrower an opportunity for a hearing in accordance with paragraphs (b)(9)(i)(F) through (J) of this section and other guidance provided by the Secretary, for any objection regarding the existence, amount, or enforceability of the debt, and any objection that withholding from the borrower's disposable pay in the amount or at the rate proposed in the notice would cause financial hardship to the borrower.

(*2*) The borrower must request a hearing in writing. At the borrower's option, the hearing may be oral or written. The time and location of the hearing is established by the guaranty agency. An oral hearing may, at the borrower's option, be conducted either in-person or by telephone conference. The agency notifies the borrower of the process for arranging the time and location of an oral hearing. All telephonic charges are the responsibility of the agency. All travel expenses incurred by the borrower in connection with an in-person oral hearing are the responsibility of the borrower.

(F)(*1*) If the borrower submits a written request for a hearing on the existence, amount, or enforceability of the debt—

(*i*) The guaranty agency must provide evidence of the existence of the debt. If the agency provides evidence of the existence of the debt, the borrower must prove by the preponderance of the evidence that no debt exists, the debt is not enforceable under applicable law, the amount the guaranty agency claims

the borrower owes is incorrect, including that any amount of collection costs assessed to the borrower exceeds the limits established under § 682.410(b)(2), or the debt is not delinquent; and

(*ii*) The borrower may raise any of the objections described in paragraph (b)(9)(i)(F)(*1*)(*i*) of this section not raised in the written request, but must do so before a hearing is completed. For purposes of this paragraph, a hearing is completed when the record is closed and the hearing official notifies the parties that no additional evidence or objections will be accepted.

(*2*) If the borrower submits a written request for a hearing on an objection that withholding the amount or rate that the agency proposed in its notice would cause financial hardship to the borrower and the borrower's spouse and dependents—

(*i*) The borrower bears the burden of proving the claim of financial hardship by a preponderance of the credible evidence by providing credible documentation that the amount of wages proposed in the notice would leave the borrower unable to meet basic living expenses of the borrower, the borrower's spouse, and the borrower's dependents. The documentation must show the amount of the costs incurred for basic living expenses and the income available from any source to meet those expenses;

(*ii*) The borrower's claim of financial hardship must be evaluated by comparing the amounts that the borrower proves are being incurred for basic living expenses against the amounts spent for basic living expenses by families of the same size and similar income to the borrower's. For the purposes of this section, the standards published by the Internal Revenue Service under 26 U.S.C. 7122(c)(2) (the National Standards) establish the average amounts spent for basic living expenses for families of the same size as, and with family incomes comparable to, the borrower's family;

(*iii*) The amount that the borrower proves is incurred for a type of basic living expense is considered to be reasonable to the extent that the amount does not exceed the amount spent for that expense by families of the same size and similar income according to the National Standards. If the borrower claims an amount for any basic living expense that exceeds the amount in the National Standards, the borrower must prove that the amount claimed is reasonable and necessary;

(*iv*) If the borrower's objection to the rate or amount proposed in the notice is upheld in part, the garnishment may be ordered at a lesser rate or amount, that is determined will allow the borrower to meet basic living expenses proven to be reasonable and necessary. If this financial hardship determination is made after a garnishment order is already in effect, the guaranty agency must notify the borrower's employer of any change required by the determination in the amount to be withheld or the rate of withholding under that order; and

(*v*) A determination by a hearing official that financial hardship would result from garnishment is effective for a period not longer than six months after the date of the finding. After this period, the guaranty agency may require the borrower to submit current information regarding the borrower's family income and living expenses. If the borrower fails to submit current information within 30 days of this request, or the guaranty agency concludes from a review of the available evidence that garnishment should now begin or the rate or the amount of an outstanding withholding should be increased, the guaranty agency must notify the borrower and provide the borrower with an opportunity to contest the determination and obtain a hearing on the objection under the procedures in paragraph (b)(9)(i) of this section.

(G) If the borrower's written request for a hearing is received by the guaranty agency on or before the 30th day following the date of the notice described in paragraph (b)(9)(i)(B) of this section, the guaranty agency may not issue a withholding order until the borrower has been provided the requested hearing and a decision has been rendered. The guaranty agency must provide a hearing to the borrower in sufficient time to permit a decision, in accordance with the procedures that the agency may prescribe, to be rendered within 60 days.

(H) If the borrower's written request for a hearing is received by the guaranty agency after the 30th day following the date of the notice described in paragraph (b)(9)(i)(B) of this section, the guaranty agency must provide a hearing to the borrower in sufficient time that a decision, in accordance with the procedures that the agency may prescribe, may be rendered within 60 days, but may not delay issuance of a withholding order unless the agency determines that the delay in filing the request was caused by factors over which the borrower had no control, or the agency receives information that the agency believes justifies a delay or cancellation of the withholding order. If a decision is not rendered within 60 days following receipt of a borrower's written request for a hearing, the guaranty agency must suspend the order beginning on the 61st day after the hearing request was received until a hearing is provided and a decision is rendered.

(I) The hearing official appointed by the agency to conduct the hearing may be any qualified individual, including an administrative law judge. Under no circumstance may the hearing official be under the supervision or control of the head of the guaranty agency or of a third-party servicer or collection contractor employed by the agency. Payment of compensation by the guaranty agency, third-party servicer, or collection contractor employed by the agency to the hearing official for service as a hearing official does not constitute impermissible supervision or control under this paragraph. The guaranty agency must ensure that, except as needed to arrange the type of hearing requested by the borrower and the time, place, and manner of conducting an oral hearing, all oral communications with any representative of the guaranty agency or with the borrower are made within the hearing of the other party, and that copies of any written communication with either party are promptly provided to the other party.

(J) The hearing official must conduct any hearing as an informal proceeding, require witnesses in an oral hearing to testify under oath or affirmation, and maintain a summary record of any hearing. The hearing official must issue a final written decision at the earliest practicable date, but not later than 60 days after the guaranty agency's receipt of the borrower's hearing request. However—

(*1*) The borrower may request an extension of that deadline for a reasonable period, as determined by the hearing official, for the purpose of submitting additional evidence; and

(*2*) The agency may request, and the hearing official must grant, a reasonable extension of time sufficient to enable the guaranty agency to evaluate and respond to any such additional evidence or any objections raised pursuant to paragraph (b)(9)(i)(F)(*1*)(*ii*) of this section.

(K) An employer served with a garnishment order from the guaranty agency with respect to a borrower whose wages are not then subject to a withholding order of any kind must deduct and pay to the agency from a borrower's disposable pay an amount that does not exceed the smallest of—

(*1*) The amount specified in the guaranty agency order;

(*2*) The amount permitted by section 488A(a)(1) of the Act, which is 15

percent of the borrower's disposable pay; or

(*3*) The amount permitted by 15 U.S.C. 1673(a)(2), which is the amount by which the borrower's disposable pay exceeds 30 times the minimum wage.

(L) If a borrower's pay is subject to more than one garnishment order—

(*1*) Unless other Federal law requires a different priority, the employer must pay the agency the amount calculated under paragraph (b)(9)(i)(K) of this section before the employer complies with any later garnishment orders, except a family support withholding order;

(*2*) If an employer is withholding from a borrower's pay based on a garnishment order served on the employer before the guaranty agency's order, or if a withholding order for family support is served on an employer at any time, the employer must comply with the agency's garnishment order by withholding an amount that is the lesser of—

(*i*) The amount specified in the guaranty agency order; or

(*ii*) The amount calculated under paragraph (b)(9)(i)(L)(*3*) of this section less the amount or amounts withheld under the garnishment order or orders that have priority over the agency's order; and

(*3*) The cumulative withholding for all garnishment orders issued by guaranty agencies may not exceed, for an individual borrower, the amount permitted by 15 U.S.C. 1673, which is the lesser of 25 percent of the borrower's disposable pay or the amount by which the borrower's disposable pay exceeds 30 times the minimum wage. If a borrower owes debts to one or more guaranty agencies, each agency may issue a garnishment order to enforce each of those debts, but no single agency may order a total amount exceeding 15 percent of the disposable pay of a borrower to be withheld. The employer must honor these orders as provided in paragraphs (b)(9)(i)(L)(*1*) and (*2*) of this section.

(M) Notwithstanding paragraphs (b)(9)(i)(K) and (L) of this section, an employer may withhold and pay a greater amount than required under the order if the borrower gives the employer written consent.

(N) A borrower may, at any time, raise an objection to the amount or the rate of withholding specified in the guaranty agency's order to the borrower's employer on the ground of financial hardship. However, the guaranty agency is not required to consider such an objection and provide the borrower with a hearing until at least six months after the agency issued the most recent garnishment order, either one for which the borrower did not request a hearing or one that was issued after a hardship-related hearing determination. The agency may provide a hearing in extraordinary circumstances earlier than six months if the borrower's request for review shows that the borrower's financial circumstances have substantially changed after the garnishment notice because of an event such as injury, divorce, or catastrophic illness.

(O) A garnishment order is effective until the guaranty agency rescinds the order or the agency has fully recovered the amounts owed by the borrower, including interest, late fees, and collections costs. If an employer is unable to honor a garnishment order because the amount available for garnishment is insufficient to pay any portion of the amount stated in the order, the employer must notify the agency and comply with the order when sufficient disposable pay is available. Upon full recovery of the debt, the agency must send the borrower's employer notification to stop wage withholding.

(P) The guaranty agency must sue any employer for any amount that the employer, after receipt of the withholding order provided by the agency under paragraph (b)(9)(i)(R) of this section, fails to withhold from wages owed and payable to an employee under the employer's normal pay and disbursement cycle.

(Q) The guaranty agency may not garnish the wages of a borrower whom it knows has been involuntarily separated from employment until the borrower has been reemployed continuously for at least 12 months. The borrower has the burden of informing the guaranty agency of the circumstances surrounding the borrower's involuntary separation from employment.

(R) Unless the guaranty agency receives information that the agency believes justifies a delay or cancellation of the withholding order, it must send a withholding order to the employer within 20 days after the borrower fails to make a timely request for a hearing, or, if a timely request for a hearing is made by the borrower, within 20 days after a final decision is made by the agency to proceed with garnishment.

(S) The notice given to the employer under paragraph (b)(9)(i)(R) of this section must contain only the information as may be necessary for the employer to comply with the withholding order and to ensure proper credit for payments received. At a minimum, the notice given to the employer includes the borrower's name, address, and Social Security Number, as well as instructions for withholding and information as to where the employer must send payments.

(T)(*1*) A guaranty agency may use a third-party servicer or collection contractor to perform administrative activities associated with administrative wage garnishment, but may not allow such a party to conduct required hearings or to determine that a withholding order is to be issued. Subject to the limitations of paragraphs (b)(9)(i)(T)(*2*) and (*3*) of this section, administrative activities associated with administrative wage garnishment may include but are not limited to—

(*i*) Identifying to the agency suitable candidates for wage garnishment pursuant to agency standards;

(*ii*) Obtaining employment information for the purposes of garnishment;

(*iii*) Sending candidates selected for garnishment by the agency notices prescribed by the agency;

(*iv*) Negotiating alternative repayment arrangements with borrowers;

(*v*) Responding to inquiries from notified borrowers;

(*vi*) Receiving garnishment payments on behalf of the agency;

(*vii*) Arranging for the retention of hearing officials and for the conduct of hearings on behalf of the agency;

(*viii*) Providing information to borrowers or hearing officials on the process or conduct of hearings; and

(*ix*) Sending garnishment orders and other communications to employers on behalf of the agency.

(*2*) Only an authorized official of the agency may determine that an individual withholding order is to be issued. The guarantor must record the official's determination for each order it issues, including any order which it causes to be prepared or mailed by a third-party servicer or collection contractor. The guarantor must evidence the official's approval, either by including the official's signature on the order or, if the agency uses a form of withholding order that does not provide for execution by signature, by retaining in the agency's records the identity of the approving official, the date of the approval, the amount or rate of the order, the name and address of the employer to whom the order was issued, and the debt for which the order was issued.

(*3*) The withholding order must identify the guaranty agency as the holder of the debt, as the issuer of the order, and as the sole party legally authorized to issue the withholding order. If a guaranty agency uses a third-

party servicer or collection contractor to prepare and mail a withholding order that includes the name of the servicer or contractor that prepared or mailed the order, the guaranty agency must also ensure that the order contains no captions or representations that the servicer or contractor is the party that issued, or was empowered by Federal law or by the agency to issue, the withholding order.

(U) As specified in section 488A(a)(8) of the Act, the borrower may seek judicial relief, including punitive damages, if the employer discharges, refuses to employ, or takes disciplinary action against the borrower due to the issuance of a withholding order.

(ii) For purposes of paragraph (b)(9) of this section—

(A) ''Borrower'' includes all endorsers on a loan;

(B) ''Day'' means calendar day;

(C) ''Disposable pay'' means that part of a borrower's compensation for personal services, whether or not denominated as wages from an employer, that remains after the deduction of health insurance premiums and any amounts required by law to be withheld, and includes, but is not limited to, salary, bonuses, commissions, or vacation pay. ''Amounts required by law to be withheld'' include amounts for deductions such as Social Security taxes and withholding taxes, but do not include any amount withheld under a court order or other withholding order. All references to an amount of disposable pay refer to disposable pay calculated for a single week;

(D) ''Employer'' means a person or entity that employs the services of another and that pays the latter's wages or salary and includes, but is not limited to, State and local governments, but does not include an agency of the Federal Government;

(E) ''Financial hardship'' means an inability to meet basic living expenses for goods and services necessary for the survival of the borrower and the borrower's spouse and dependents;

(F) ''Garnishment'' means the process of withholding amounts from an employee's disposable pay and paying those amounts to a creditor in satisfaction of a withholding order; and

(G) ''Withholding order'' means any order for withholding or garnishment of pay issued by the guaranty agency and may also be referred to as ''wage garnishment order'' or ''garnishment order.''

* * * * *

(c) * * *

(1) * * *

(i) * * *

(C) Each school that participated in the guaranty agency's program, located in a State for which the guaranty agency is the principal guaranty agency, that has a cohort default rate, as described in subpart M of 34 CFR part 668, that includes FFEL Program loans, for either of the 2 immediately preceding fiscal years, as defined in 34 CFR 668.182, that exceeds 20 percent, unless the school is under a mandate from the Secretary under subpart M of 34 CFR part 668 to take specific default reduction measures or if the total dollar amount of loans entering repayment in each fiscal year on which the cohort default rate of over 20 percent is based does not exceed $100,000; or

* * * * *

(10) Taking prompt action to protect the rights of borrowers and the Federal fiscal interest respecting loans that the agency has guaranteed when the agency learns that a school that participated in the FFEL Program or a holder of loans participating in the program is experiencing problems that threaten the solvency of the school or holder, including—

* * * * *

§ 682.411 [Amended]

■ 46. Section 682.411 is amended by:

■ A. In paragraph (d)(2), removing the words ''all national credit bureaus'' and adding, in their place, the words ''each nationwide consumer reporting agency''.

■ B. In paragraph (f), removing the words ''a national credit bureau'' and adding, in their place, the words ''each nationwide consumer reporting agency''.

■ C. In paragraph (n)(2), removing the words ''a national credit bureau'' and adding, in their place, the words ''each nationwide consumer reporting agency''.

■ D. In paragraph (o)(2), removing the words ''credit bureau'' and adding, in their place, the words ''consumer reporting agency''.

§ 682.412 [Amended]

■ 47. Section 682.412(a)(2) is amended by removing the words ''as provided under § 682.301''.

■ 48. Section 682.413 is amended by:

■ A. In paragraph (c)(1)(vi), removing the words ''certification required under § 682.206(f)(1)'' and adding, in their place the words ''required lender verification certification''.

■ B. Revising the first sentence of paragraph (h).

The revision reads as follows:

§ 682.413 Remedial actions.

* * * * *

(h) In any action to require repayment of funds or to withhold funds from a guaranty agency, or to limit, suspend, or terminate a guaranty agency based on a violation of section 428(b)(3) of the Act, if the Secretary finds that the guaranty agency provided or offered the prohibited payments or activities, the Secretary applies a rebuttable presumption that the payments or activities were offered or provided to secure applications for FFEL loans or to secure FFEL loan volume. * * *

* * * * *

§ 682.414 [Amended]

■ 49. Section 682.414 is amended by:

■ A. In paragraph (a)(1)(ii)(D), removing the words ''credit bureau'' and adding, in their place, the words ''consumer reporting agency''.

■ B. In paragraph (a)(4)(ii)(J), removing the words ''credit bureau'' and adding, in their place, the words ''consumer reporting agency''.

■ C. In paragraph (a)(6)(ii)(D), removing the word ''is'' and adding, in its place, the word ''it''.

■ D. In paragraph (b)(2), removing paragraph (b)(2)(i).

■ E. Redesignating paragraphs (b)(2)(ii) through (b)(2)(iv), as (b)(2)(i) through (b)(2)(iii), respectively.

■ F. In paragraph (b)(3)(i), removing the words ''schools and''.

■ G. In paragraph (b)(3)(ii), removing the words ''schools and''.

■ H. In paragraph (b)(3)(iii), removing the words ''school or''.

■ I. In paragraph (c)(2), removing the citation ''§ 682.401(b)(21) and (22)'' and adding, in its place, the citation ''§ 682.401(b)(12) and (13)''.

§ 682.416 [Amended]

■ 50. Section 682.416(d)(2) is amended by removing the word ''Title'' and adding, in its place, the word ''title''.

§ 682.418 [Removed]

■ 51. Remove § 682.418.

§ 682.419 [Amended]

■ 52. Section 682.419 is amended by:

■ A. In paragraph (b)(8), removing the words '', in accordance with § 682.420''.

■ B. In paragraph (c)(6), removing the citation ''§ 682.421'' and adding, in its place, the citation ''section 422A(f) of the Act''.

§ 682.420 [Removed]

■ 53. Remove § 682.420.

§ 682.421 [Removed]

■ 54. Remove § 682.421.

§ 682.422 [Removed]

■ 55. Remove § 682.422.

§ 682.423 [Amended]

■ 56. Section 682.423 is amended by:
■ A. In the second sentence of paragraph (a), adding the word ''may'' between the words ''that'' and ''have''.
■ B. In paragraph (a), removing the last sentence.

Subpart E [Removed and Reserved]

■ 57. Remove and reserve subpart E of part 682.
■ 58. Revising the heading to subpart F of part 682 to read as follows:

Subpart F—Requirements, Standards, and Payments for Schools That Participated in the FFEL Program

* * * * *

§ 682.601 [Removed]

■ 59. Remove § 682.601.

§ 682.602 [Removed]

■ 60. Remove § 682.602.
■ 61. Section 682.603 is amended by:
■ A. Revising the section heading.
■ B. In paragraph (b)(3), removing the citation ''§ 682.604(c)'' and adding, in its place, the citation ''section 428G of the Act''.
■ C. Revising paragraphs (g), (h), and (i).
■ D. Removing the second of the two paragraphs that are both designated as paragraph (j).
■ E. Revising the first of the two paragraphs that are both designated as paragraph (j).
■ F. Adding paragraphs (k) and (l).

The revisions and additions read as follows:

§ 682.603 Certification by a school that participated in the FFEL Program in connection with a loan application.

* * * * *

(g) The maximum period for which a school may certify a loan application is—

(1) Generally an academic year, as defined by 34 CFR 668.3, except that a guaranty agency may allow a school to use a longer period of time, corresponding to the period to which the agency applies the annual loan limits; or

(2) For a defaulted borrower who has regained eligibility under § 682.401(b)(1), the academic year in which the borrower regained eligibility.

(h) In certifying a Stafford or Unsubsidized Stafford loan amount in accordance with § 682.204—

(1) A program of study must be considered at least one full academic year if—

(i) The number of weeks of instructional time is at least 30 weeks; and

(ii) The number of clock hours is a least 900, the number of semester or trimester hours is at least 24, or the number of quarter hours is at least 36;

(2) A program of study must be considered two-thirds (⅔) of an academic year if—

(i) The number of weeks of instructional time is at least 20 weeks; and

(ii) The number of clock hours is at least 600, the number of semester or trimester hours is at least 16, or the number of quarter hours is at least 24;

(3) A program of study must be considered one-third (⅓) of an academic year if—

(i) The number of weeks of instruction time is at least 10 weeks; and

(ii) The number of clock hours is at least 300, the number of semester or trimester hours is at least 8, or the number of quarter hours is at least 12; and

(4) In prorating a loan amount for a student enrolled in a program of study with less than a full academic year remaining, the school need not recalculate the amount of the loan if the number of hours for which an eligible student is enrolled changes after the school certifies the loan.

(i)(1) If a school measures academic progress in an educational program in credit hours and uses either standard terms (semesters, trimesters, or quarters) or nonstandard terms that are substantially equal in length, and each term is at least nine weeks of instructional time in length, a student is considered to have completed an academic year and progresses to the next annual loan limit when the academic year calendar period has elapsed.

(2) If a school measures academic progress in an educational program in credit hours and uses nonstandard terms that are not substantially equal in length or each term is not at least nine weeks of instructional time in length, or measures academic progress in credit hours and does not have academic terms, a student is considered to have completed an academic year and progresses to the next annual loan limit at the later of—

(i) The student's completion of the weeks of instructional time in the student's academic year; or

(ii) The date, as determined by the school, that the student has successfully completed the academic coursework in the student's academic year.

(3) If a school measures academic progress in an educational program in clock hours, a student is considered to have completed an academic year and progresses to the next annual loan limit at the later of—

(i) The student's completion of the weeks of instructional time in the student's academic year; or

(ii) The date, as determined by the school, that the student has successfully completed the clock hours in the student's academic year.

(4) For purposes of this section, terms in a loan period are substantially equal in length if no term in the loan period is more than two weeks of instructional time longer than any other term in that loan period.

(j)(1) A school must cease certifying loans based on the exceptions in section 428G(a)(3) of the Act no later than—

(i) 30 days after the date the school receives notification from the Secretary of an FFEL cohort default rate, calculated under subpart M of 34 CFR part 668, that causes the school to no longer meet the qualifications outlined in those paragraphs; or

(ii) October 1, 2002.

(2) A school must cease certifying loans based on the exceptions in section 428G(a)(3) of the Act no later than 30 days after the date the school receives notification from the Secretary of an FFEL cohort default rate, calculated under subpart M of 34 CFR part 668, that causes the school to no longer meet the qualifications outlined in those paragraphs.

(k) A school may not assess the borrower, or the student in the case of a parent PLUS loan, a fee for the completion or certification of any FFEL Program form or information or for providing any information necessary for a student or parent to receive a loan under part B of the Act or any benefits associated with such a loan.

(l) Pursuant to paragraph (b)(3) of this section, a school may not request the disbursement by the lender for loan proceeds earlier than the period specified in 34 CFR 668.167.

* * * * *

■ 62. Section 682.604 is amended by:
■ A. Revising the section heading.
■ B. Removing paragraphs (a), (c), (d), (e), (f), (h), and (i).
■ C. Redesignating paragraph (g) as paragraph (a).
■ D. Removing and reserving paragraph (b).
■ E. In the last sentence of newly redesignated paragraph (a)(1), adding the punctuation and words '', or by sending written counseling materials by email to an email address provided by the student borrower'' between the words ''last known address'' and ''within 30 days''.
■ F. Removing newly redesignated paragraph (a)(2)(vi).
■ G. In newly redesignated paragraph (a), redesignating paragraphs (a)(2)(vii)

through (a)(2)(xii) as paragraphs (a)(2)(ix) through (a)(2)(xiv), respectively.

■ H. Adding new paragraphs (a)(2)(vi) through (a)(2)(viii).

■ I. Adding new paragraph (a)(5).

The revision and additions read as follows:

§ 682.604 Required exit counseling for borrowers.

(a) * * *

(2) * * *

(vi) Explain to the borrower the use of a Master Promissory Note;

(vii) Emphasize to the student borrower the seriousness and importance of the repayment obligation the borrower has assumed;

(viii) Emphasize to the student borrower that the full amount of the loan (other than a loan made or originated by the school) must be repaid in full even if the student borrower does not complete the program, does not complete the program within the regular time for program completion, is unable to obtain employment upon completion, or is otherwise dissatisfied with or does not receive the educational or other services that the student borrower purchased from the school;

* * * * *

(5)(i) For students who have received both FFEL Program and Direct Loan Program loans for attendance at a school, the school's compliance with the exit counseling requirements in 34 CFR 685.304(b) satisfies the requirements of this section if the school ensures that the exit counseling also provides the borrower with the information described in paragraph (a)(2)(i) and (a)(2)(ii) of this section.

(ii) A student's completion of electronic interactive exit counseling offered by the Secretary satisfies the requirements of this section, and for students who have also received Direct Loan Program loans for attendance at the school, the requirements of 34 CFR 685.304(b).

* * * * *

§ 682.605 [Amended]

■ 63. Section 682.605 is amended by:

■ A. In paragraph (b), adding the words ''and the Secretary'' between the words ''lender'' and ''the date''.

■ B. In paragraph (c), adding the words ''and the Secretary'' between the word ''lender'' and the punctuation '',''.

§ 682.608 [Removed]

■ 64. Remove § 682.608.

■ 65. Section 682.610 is amended by:

■ A. Revising the section heading.

■ B. Revising paragraph (b)(5).

■ C. Revising paragraph (c).

The revisions read as follows:

§ 682.610 Administrative and fiscal requirements for schools that participated.

* * * * *

(b) * * *

(5) For loans delivered by electronic funds transfer or master check, a copy of the borrower's required written authorization, if it was not provided in the loan application or MPN, to deliver the initial and subsequent disbursements of each FFEL Program loan; and

* * * * *

(c) *Enrollment reporting process.* (1) Upon receipt of an enrollment report from the Secretary, a school must update all information included in the report and return the report to the Secretary—

(i) In the manner and format prescribed by the Secretary; and

(ii) Within the timeframe specified by the Secretary.

(2) Unless it expects to submit its next updated enrollment report to the Secretary within the next 60 days, a school must notify the Secretary within 30 days after the date that the school discovers that—

(i) A loan under title IV of the Act was made to or on behalf of a student who was enrolled or accepted for enrollment at the school, and the student has ceased to be enrolled on at least a half-time basis or failed to enroll on at least a half-time basis for the period for which the loan was intended; or

(ii) A student who is enrolled at the school and who received a loan under title IV of the Act has changed his or her permanent address.

* * * * *

■ 66. The heading of subpart G of part 682 is revised to read as follows:

Subpart G—Limitation, Suspension, or Termination of Lender or Third-party Servicer Eligibility and Disqualification of Lenders

* * * * *

§ 682.700 [Amended]

■ 67. Section 682.700 is amended by:

■ A. In paragraph (a), removing the words ''or school'' in the final sentence.

■ B. In paragraph (b)(1)(ii), adding the word ''or'' after the punctuation '';''.

■ C. Removing paragraph (b)(2).

■ D. Redesignating paragraph (b)(3) as paragraph (b)(2).

■ E. In paragraph (c), removing the words ''or schools''.

■ 68. Section 682.701 is amended by revising the definition of ''*Disqualification*'' to read as follows:

§ 682.701 Definitions of terms used in this subpart.

* * * * *

Disqualification: The removal of a lender's eligibility for an indefinite period of time by the Secretary on review of limitation, suspension, or termination action taken against the lender by a guaranty agency.

* * * * *

■ 69. Section 682.702 is amended by:

■ A. In paragraph (a), removing the words ''in paragraph (d) of this section and''.

■ B. Revising paragraph (b)(1).

■ C. Removing paragraph (b)(2).

■ D. Redesignating paragraph (b)(3) as paragraph (b)(2).

■ E. Removing paragraph (d).

The revision reads as follows:

§ 682.702 Effect on participation.

* * * * *

(b) * * *

(1) A limit on the number or total amount of loans that a lender may purchase or hold under the FFEL Program; or

* * * * *

§ 682.704 [Amended]

■ 70. Section 682.704(a) introductory text is amended, by removing the words ''stop the issuance of guarantee commitments by the Secretary and guarantee agencies and to''.

§ 682.705 [Amended]

■ 71. Section 682.705 is amended by:

■ A. In paragraph (a)(1) introductory text, removing the words ''new loan made by the lender or''.

■ B. In paragraph (b)(2)(v), removing the words '', except as provided in paragraph (c)(9) of this section,''.

■ C. Removing paragraph (c).

§ 682.706 [Amended]

■ 72. Section 682.706 is amended by removing paragraph (d).

■ 73. Section 682.709 is amended by adding paragraph (d) to read as follows:

§ 682.709 Reimbursements, refunds, and offsets.

* * * * *

(d) In any action under this part based on a violation of the prohibitions in section 435(d)(5) of the Act, if the Secretary, the designated Department official, or the hearing official finds that the lender provided or offered the payments or activities described in paragraph (5)(i) of the definition of ''lender'' in § 682.200(b), the Secretary or the official applies a rebuttable presumption that the payments or activities were offered or provided to secure applications for FFEL loans. To

reverse the presumption, the lender must present evidence that the activities or payments were provided for a reason unrelated to securing applications for FFEL loans or securing FFEL loan volume.

* * * * *

§ 682.711 [Amended]

■ 74. Section 682.711 is amended by:
■ A. Removing paragraph (c).
■ B. Redesignating paragraphs (d) and (e) as paragraphs (c) and (d), respectively.
■ C. In newly redesignated paragraph (d)(2), removing the parenthetical ''(d)'' and adding, in its place, the parenthetical ''(c)''.
■ D. In newly redesignated paragraph (d)(2), removing the parenthetical ''(e)'' and adding, in its place, the parenthetical ''(d)''.

§ 682.712 [Amended]

■ 75. Section 682.712 is amended by:
■ A. In paragraph (g)(2), removing the parenthetical ''(j)'' and adding, in its place, the parenthetical ''(i)''.
■ B. In paragraph (h)(2) and in paragraph (h)(3) introductory text, removing the parenthetical ''(j)'' and adding, in its place, the parenthetical ''(i)''.
■ C. Removing paragraph (i).
■ D. Redesignating paragraph (j) as paragraph (i).

§ 682.713 [Removed]

■ 76. Remove § 682.713.

Subpart H of part 682—[Removed and Reserved]

■ 77. Remove and reserve subpart H of part 682.

Appendix C to Part 682 [Removed]

■ 78. Remove and reserve Appendix C to part 682.

Appendix D to Part 682 [Amended]

■ 79. In appendix D to part 682, paragraph 3 of the introduction is amended by removing the final citation ''34 CFR 682.401(d)'' and adding, in its place, the citation ''34 CFR 682.401(c)''.

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

■ 80. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1070g, 1087a, *et seq.,* unless otherwise noted.

■ 81. Section 685.100 is amended by:
■ A. Revising paragraph (a).
■ B. In paragraph (b), removing the words ''has been selected by the Secretary to participate'' and adding, in their place, the word ''participates''.
■ C. Revising paragraph (c).

The revisions read as follows:

§ 685.100 The William D. Ford Federal Direct Loan Program.

(a) Under the William D. Ford Federal Direct Loan (Direct Loan) Program (formerly known as the Federal Direct Student Loan Program), the Secretary makes loans to enable a student or parent to pay the costs of the student's attendance at a postsecondary school. This part governs the Federal Direct Stafford/Ford Loan Program, the Federal Direct Unsubsidized Stafford/Ford Loan Program, the Federal Direct PLUS Program, and the Federal Direct Consolidation Loan Program. The Secretary makes loans under the following program components:

(1)(i) Federal Direct Stafford/Ford Loan Program (Direct Subsidized Loan Program), which provides loans to undergraduate, graduate, and professional students. Loans made under this program are referred to as Direct Subsidized Loans. Except as provided in paragraph (a)(1)(ii) of this section, the Secretary subsidizes the interest while the borrower is in an in-school, grace, or deferment period. Graduate and professional students are not eligible to receive Direct Subsidized Loans for any period of enrollment beginning on or after July 1, 2012.

(ii) The Secretary does not subsidize the interest that accrues during the grace period on any Direct Subsidized Loan for which the first disbursement is made on or after July 1, 2012 and before July 1, 2014.

(2) Federal Direct Unsubsidized Stafford/Ford Loan Program (Direct Unsubsidized Loan Program), which provides loans to undergraduate, graduate and professional students. Loans made under this program are referred to as Direct Unsubsidized Loans. The borrower is responsible for the interest that accrues during any period.

(3) Federal Direct PLUS Program (Direct PLUS Loan Program), which provides loans to parents of dependent students and to graduate or professional students. Loans made under this program are referred to as Direct PLUS Loans. The borrower is responsible for the interest that accrues during any period.

(4) Federal Direct Consolidation Loan Program (Direct Consolidation Loan Program), which provides loans to borrowers to consolidate certain Federal educational loans. Loans made under this program are referred to as Direct Consolidation Loans.

* * * * *

(c) The Secretary makes a Direct Consolidation Loan only to a borrower who is consolidating at least one loan made under the Direct Loan Program or the Federal Family Education Loan (FFEL) Program.

* * * * *

■ 82. Section 685.101 is revised to read as follows:

§ 685.101 Participation in the Direct Loan Program.

(a) Colleges, universities, graduate and professional schools, vocational schools, and proprietary schools may participate in the Direct Loan Program. Participation in the Direct Loan Program enables an eligible student or parent to obtain a loan to pay for the student's cost of attendance at the school.

(b)(1) An eligible undergraduate student who is enrolled at a school participating in the Direct Loan Program may borrow under the Direct Subsidized Loan and Direct Unsubsidized Loan Programs.

(2) An eligible graduate or professional student enrolled at a school participating in the Direct Loan Program may borrow under the Direct Subsidized Loan, Direct Unsubsidized Loan, and Direct PLUS Loan Programs, except that a graduate or professional student may not borrow under the Direct Subsidized Loan Program for any period of enrollment beginning on or after July 1, 2012.

(3) An eligible parent of an eligible dependent student enrolled at a school participating in the Direct Loan Program may borrow under the Direct PLUS Loan Program.

(Authority: 20 U.S.C. 1087a *et seq.*)

■ 83. Section 685.102 is amended by:
■ A. In paragraph (a)(1) introductory text, removing the words ''subpart A of''.
■ B. In paragraph (a)(1), removing the terms ''Academic Competitiveness Grant (ACG) Program'', ''Disburse'', ''Federal Direct Student Loan Program (Direct Loan Program)'', ''Leveraging Educational Assistance Partnership Program'', ''National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) Program'', and ''State''.
■ C. In paragraph (a)(1), adding the terms ''Disbursement'' and ''William D. Ford Federal Direct Loan (Direct Loan) Program'' in alphabetical order.
■ D. In paragraph (a)(2), adding the terms ''Correspondence course'' and ''State'' in alphabetical order.
■ E. In paragraph (a)(2), removing the term ''Program of study by correspondence''.
■ F. Removing paragraph (a)(3).

■ G. In paragraph (b), adding the definitions of ''Act'', ''Endorser'', ''Federal Insured Student Loan Program'', ''Federal Stafford Loan Program'', ''Guaranty agency'', ''Holder'', ''Lender'', ''Nationwide consumer reporting agency'', ''Substantial gainful activity'', and ''Totally and permanently disabled'', in alphabetical order.

■ H. In paragraph (b), removing the definitions of ''Alternative originator'', ''Consortium'', ''School origination option 1'', ''School origination option 2'', ''Servicer'', and ''Standard origination''.

■ I. In paragraph (b), in the definition of ''Estimated financial assistance'', revising paragraphs (1)(vi) and (2)(i).

■ J. In paragraph (b), in the heading of the definition of ''Federal Direct Consolidation Loan Program:'', adding the words ''(Direct Consolidation Loan Program)'' immediately before the punctuation '':''.

■ K. In paragraph (b), in paragraph (4) of the definition of ''Federal Direct Consolidation Loan Program'', removing the words ''The term'' in the first sentence and adding, in their place, the words ''In the case of a Direct Consolidation Loan that entered repayment prior to July 1, 2006, the term''.

■ L. In paragraph (b), in the heading of the definition of ''Federal Direct PLUS Program:'', adding the words ''(Direct PLUS Loan Program)'' immediately before the punctuation '':''.

■ M. In paragraph (b), revising the definition of ''Federal Direct Stafford/Ford Loan Program''.

■ N. In paragraph (b), in the heading of the definition of ''Federal Direct Unsubsidized Stafford/Ford Loan Program:'', adding the words ''(Direct Unsubsidized Loan Program)'' immediately before the punctuation '':''.

■ O. In paragraph (b), revising the definition of ''Grace period''.

■ P. In paragraph (b), in the definition of ''Master Promissory Note (MPN)'', adding a new paragraph (4).

■ Q. In paragraph (b), revising the definition of ''Satisfactory repayment arrangement''.

The revisions and additions read as follows:

§ 685.102 Definitions.

* * * * *

(b) * * *

Act: The Higher Education Act of 1965, as amended, 20 U.S.C. 1071 *et seq.*

* * * * *

Endorser: An individual who signs a promissory note and agrees to repay the loan in the event that the borrower does not.

Estimated financial assistance: (1) * * *

(vi) The estimated amount of other Federal student financial aid, including but not limited to a Federal Pell Grant, campus-based aid, and the gross amount (including fees) of subsidized and unsubsidized Federal Stafford Loans, Direct Subsidized and Unsubsidized Loans, and Federal PLUS or Direct PLUS Loans.

(2) * * *

(i) Those amounts used to replace the expected family contribution (EFC), including the amounts of any TEACH Grants, unsubsidized Federal Stafford Loans or Direct Unsubsidized Loans, Federal PLUS or Direct PLUS Loans, and non-federal non-need-based loans, including private, state-sponsored, and institutional loans. However, if the sum of the amounts received that are being used to replace the student's EFC exceed the EFC, the excess amount must be treated as estimated financial assistance;

* * * * *

Federal Direct Stafford/Ford Loan Program (Direct Subsidized Loan Program): A loan program authorized by title IV, part D of the Act that provides loans to undergraduate, graduate, and professional students attending Direct Loan Program schools, and one of the components of the Direct Loan Program. The Secretary subsidizes the interest while the borrower is in an in-school, grace, or deferment period, except that the Secretary does not subsidize the interest that accrues during the grace period on a loan for which the first disbursement is made on or after July 1, 2012 and before July 1, 2014. Loans made under this program are referred to as Direct Subsidized Loans. Graduate and professional students are not eligible to receive Direct Subsidized Loans for any period of enrollment beginning on or after July 1, 2012.

* * * * *

Federal Insured Student Loan Program: The loan program authorized by title IV, part B of the Act under which the Secretary directly insures lenders against losses.

Federal Stafford Loan Program: The loan program authorized by title IV, part B of the Act which encouraged the making of subsidized and unsubsidized loans to undergraduate, graduate, and professional students and is one of the Federal Family Education Loan programs.

Grace period: A six-month period that begins on the day after a Direct Subsidized Loan borrower, a Direct Unsubsidized Loan borrower, or, in some cases, a Direct Consolidation Loan borrower whose consolidation application was received before July 1, 2006, ceases to be enrolled as at least a half-time student at an eligible institution and ends on the day before the repayment period begins.

Guaranty agency: A State or private nonprofit organization that has an agreement with the Secretary under which it will administer a loan guarantee program under the Act.

Holder: The entity that owns a loan. For a FFEL Program loan, the term ''holder'' refers to an eligible lender owning a FFEL Program loan, including a Federal or State agency or an organization or corporation acting on behalf of such an agency and acting as a conservator, liquidator, or receiver of an eligible lender.

* * * * *

Lender: As used in this part, the term ''lender'' has the meaning specified in section 435(d) of the Act for purposes of the FFEL Program.

* * * * *

Master Promissory Note (MPN):

* * * * *

(4) Unless the Secretary determines otherwise, a school may use a single MPN as the basis for all loans borrowed by a student or parent borrower for attendance at that school. If a school is not authorized by the Secretary for multi-year use of the MPN, a student or parent borrower must sign a new MPN for each academic year.

Nationwide consumer reporting agency: A consumer reporting agency as defined in 15 U.S.C. 1681a(p).

* * * * *

Satisfactory repayment arrangement: (1) For the purpose of regaining eligibility under section 428F(b) of the HEA, the making of six consecutive, voluntary, on-time, full monthly payments on a defaulted loan. A borrower may only obtain the benefit of this paragraph with respect to renewed eligibility once.

(2) For the purpose of consolidating a defaulted loan under § 685.220(d)(1)(ii)(A)(*3*)—

(i) The making of three consecutive, voluntary, on-time, full monthly payments on a defaulted loan prior to consolidation; or

(ii) Agreeing to repay the Direct Consolidation Loan under one of the income-contingent repayment plans described in § 685.209 or the income-based repayment plan described in § 685.221.

(3) For the purpose of paragraph (2)(i) of this definition, the required monthly payment amount may not be more than

is reasonable and affordable based on the borrower's total financial circumstances. ''On-time'' means a payment made within 20 days of the scheduled due date, and voluntary payments are payments made directly by the borrower and do not include payments obtained by Federal offset, garnishment, or income or asset execution.

(4) A borrower has not used the one opportunity to renew eligibility for title IV assistance if the borrower makes six consecutive, on-time, voluntary, full monthly payments under an agreement to rehabilitate a defaulted loan, but does not receive additional title IV assistance prior to defaulting on that loan again.

Substantial gainful activity: A level of work performed for pay or profit that involves doing significant physical or mental activities, or a combination of both.

Totally and permanently disabled: The condition of an individual who—

(1) Is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that—

(i) Can be expected to result in death;

(ii) Has lasted for a continuous period of not less than 60 months; or

(iii) Can be expected to last for a continuous period of not less than 60 months; or

(2) Has been determined by the Secretary of Veterans Affairs to be unemployable due to a service-connected disability.

* * * * *

■ 84. Section 685.200, is amended by:
■ A. Revising paragraph (a)(1)(iv).
■ B. Revising paragraph (a)(1)(v).
■ C. Revising paragraph (b)(4).
■ D. In paragraph (c)(1)(vii)(C), adding the word ''paragraph'' immediately before the citation ''(c)(1)(vii)(A)''.
■ E. Adding a new paragraph (c)(1)(vii)(D).
■ F. Revising paragraph (d).

The revisions and addition read as follows:

§ 685.200 Borrower eligibility.

(a) * * *

(1) * * *

(iv) In the case of a borrower whose previous loan or TEACH Grant service obligation was discharged due to total and permanent disability, the student—

(A) In the case of a borrower whose prior loan under title IV of the Act or TEACH Grant service obligation was discharged after a final determination of total and permanent disability, the borrower—

(*1*) Obtains a certification from a physician that the borrower is able to engage in substantial gainful activity; and

(*2*) Signs a statement acknowledging that neither the new Direct Loan the borrower receives nor any previously discharged loan on which the borrower is required to resume payment in accordance with paragraph (a)(1)(iv)(B) of this section can be discharged in the future on the basis of any impairment present when the new loan is made, unless that impairment substantially deteriorates;

(B) In the case of a borrower who receives a new Direct Loan, other than a Direct Consolidation Loan, within three years of the date that any previous title IV loan or TEACH Grant service obligation was discharged due to a total and permanent disability in accordance with § 685.213(b)(4)(iii), 34 CFR 674.61(b)(3)(v), 34 CFR 682.402(c)(3)(iv), or 34 CFR 686.42(b) based on a discharge request received on or after July 1, 2010, the borrower resumes repayment on the previously discharged loan in accordance with § 685.213(b)(7), 34 CFR 674.61(b)(6), or 34 CFR 682.402(c)(6), or acknowledges that he or she is once again subject to the terms of the TEACH Grant agreement to serve before receiving the new loan; and

(C) In the case of a borrower whose prior loan under title IV of the Act was conditionally discharged after an initial determination that the borrower was totally and permanently disabled based on a discharge request received prior to July 1, 2010—

(*1*) The suspension of collection activity on the prior loan has been lifted;

(*2*) The borrower complies with the requirement in paragraph (a)(1)(iv)(A)(*1*) of this section;

(*3*) The borrower signs a statement acknowledging that neither the new Direct Loan the borrower receives nor the loan that has been conditionally discharged prior to a final determination of total and permanent disability can be discharged in the future on the basis of any impairment present when the borrower applied for a total and permanent disability discharge or when the new loan is made, unless that impairment substantially deteriorates; and

(*4*) The borrower signs a statement acknowledging that the suspension of collection activity on the prior loan will be lifted.

(v) In the case of a student who was enrolled in a program of study prior to July 1, 2012 and who seeks a loan but does not have a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate, the student meets the requirements under 34 CFR 668.32(e)(2), (3), (4), or (5).

* * * * *

(b) * * *

(4) The student has received a determination of his or her annual loan maximum eligibility under the Direct Unsubsidized Loan Program and, for periods of enrollment beginning before July 1, 2012, the Direct Subsidized Loan Program; and

* * * * *

(c) * * *

(1) * * *

(vii) * * *

(D) For the purposes of paragraph (c)(1)(vii)(A)(*3*) of this section, the Secretary may determine that extenuating circumstances exist based on documentation that includes, but is not limited to, an updated credit report, a statement from the creditor that the borrower has made satisfactory arrangements to repay the debt, or a satisfactory statement from the borrower explaining any delinquencies with outstanding balances of less than $500.

* * * * *

(d) *Defaulted Perkins, FFEL, and Direct Loan program borrowers.* Except as noted in § 685.220(d)(1)(ii)(A)(*3*), in the case of a student or parent borrower who is currently in default on a Perkins, FFEL, or Direct Loan program loan, the borrower must make satisfactory repayment arrangements, as described in paragraph (1) of the definition of that term under § 685.102(b), on the defaulted loan.

* * * * *

■ 85. Section 685.201 is amended by:
■ A. Revising paragraph (a)(2).
■ B. Revising paragraph (b).
■ C. Revising paragraph (c)(1).
■ D. In paragraph (c)(2), removing the word ''Servicer'' and adding, in its place, the word ''Secretary''.

The revisions read as follows:

§ 685.201 Obtaining a loan.

(a) * * *

(2) If the student is eligible for a Direct Subsidized Loan or a Direct Unsubsidized Loan, the school in which the student is enrolled must perform the following functions:

(i) Create a loan origination record and transmit the record to the Secretary.

(ii) Ensure that the loan is supported by a completed Master Promissory Note (MPN) and, if applicable, transmit the MPN to the Secretary.

(iii) In accordance with 34 CFR 668.162, draw down funds or receive funds from the Secretary, and disburse the funds to the student.

(b) *Application for a Direct PLUS Loan.* (1) For a parent to obtain a Direct

PLUS Loan, the parent must complete the Direct PLUS Loan MPN and the dependent student on whose behalf the parent is borrowing must complete a Free Application for Federal Student Aid and submit it in accordance with instructions in the application.

(2) For a graduate or professional student to apply for a Direct PLUS Loan, the student must complete a Free Application for Federal Student Aid and submit it in accordance with instructions in the application. The graduate or professional student must also complete the Direct PLUS Loan MPN.

(3) For either a parent or student PLUS borrower, as applicable, the school must complete its portion of the PLUS MPN and, if applicable, submit it to the Secretary. The Secretary makes a determination as to whether the parent or graduate or professional student has an adverse credit history. The school performs the functions described in paragraph (a)(2) of this section.

(c) * * *

(1) To obtain a Direct Consolidation Loan, the applicant must complete the application and promissory note and submit it to the Secretary. The application and promissory note sets forth the terms and conditions of the Direct Consolidation Loan and informs the applicant how to contact the Secretary. The Secretary answers questions regarding the process of applying for a Direct Consolidation Loan and provides information about the terms and conditions of both Direct Consolidation Loans and the types of loans that may be consolidated.

* * * * *

■ 86. Section 685.202 is amended by:

■ A. Revising paragraph (a)(1)(iv).

■ B. In the introductory text of paragraph (a)(1)(v), removing the words ''subsidized Stafford loan'' and adding, in their place, the words ''Direct Subsidized Loan''.

■ C. In paragraph (a)(1)(v)(A), adding the words ''or on or after July 1, 2013,'' immediately before the words ''the interest rate''.

■ D. Revising paragraph (b)(2).

The revisions read as follows:

§ 685.202 Charges for which Direct Loan Program borrowers are responsible.

(a) * * *

(1) * * *

(iv) *Loans first disbursed on or after July 1, 2006.* Except as provided in paragraph (a)(1)(v) of this section for Direct Subsidized Loans made to undergraduate students, the interest rate is 6.8 percent.

* * * * *

(b) * * *

(2) For a Direct Unsubsidized Loan, a Direct Unsubsidized Consolidation Loan that qualifies for a grace period under the regulations that were in effect for consolidation applications received before July 1, 2006, a Direct PLUS Loan, or for a Direct Subsidized Loan for which the first disbursement is made on or after July 1, 2012 and before July 1, 2014, the Secretary may capitalize the unpaid interest that accrues on the loan when the borrower enters repayment.

* * * * *

■ 87. Section 685.203 is amended by:

■ A. Revising the introductory text of paragraph (a)(1).

■ B. In paragraphs (a)(1)(i), (a)(1)(ii), and (a)(1)(iii), removing the words ''$2,625, or, for a loan disbursed on or after July 1, 2007, $3,500,'' and adding, in their place, the figure ''$3,500''.

■ C. Revising the introductory text of paragraph (a)(2).

■ D. In paragraphs (a)(2)(i) and (a)(2)(ii), removing the words ''$3,500, or, for a loan disbursed on or after July 1, 2007, $4,500,'' and adding, in their place, the figure ''$4,500''.

■ E. Revising the introductory text of paragraph (a)(3).

■ F. Revising paragraph (a)(5).

■ G. Revising the introductory text of paragraph (a)(6).

■ H. Revising paragraph (a)(7).

■ I. Revising paragraph (b).

■ J. In paragraph (c)(1)(i), removing the words ''Federal Direct Unsubsidized Loan Program'' and adding, in their place, the words ''Direct Unsubsidized Loan Program''.

■ K. Revising paragraph (c)(1)(ii).

■ L. In paragraph (c)(1)(iii), in the last sentence, removing the words ''Federal PLUS Loan or''.

■ M. Revising the introductory text of paragraph (c)(2).

■ N. In paragraphs (c)(2)(i)(A), (c)(2)(i)(B), (c)(2)(i)(C), (c)(2)(ii)(A), and (c)(2)(ii)(B), removing the words ''$4,000, or, for a loan first disbursed on or after July 1, 2008, $6,000,'' and adding, in their place, the figure ''$6,000''.

■ O. In paragraphs (c)(2)(iii)(A) and (c)(2)(iii)(B), removing the words ''$5,000, or, for a loan first disbursed on or after July 1, 2008, $7,000,'' and adding, in their place, the figure ''$7,000''.

■ P. In paragraph (c)(2)(v), removing the words ''$10,000, or, for a loan disbursed on or after July 1, 2007,''.

■ Q. In paragraph (c)(2)(vi)(A), removing the words ''$4,000, or, for a loan first disbursed on or after July 1, 2008, $6,000,'' and adding, in their place, the figure ''$6,000''.

■ R. In paragraph (c)(2)(vi)(B), removing the words ''$5,000, or, for a loan disbursed on or after July 1, 2007, $7,000,'' and adding, in their place, the figure ''$7,000''.

■ S. In paragraph (c)(2)(vii), removing the words ''$5,000, or, for a loan disbursed on or after July 1, 2007,''.

■ T. Revising the introductory text of paragraph (d).

■ U. Revising paragraph (e).

■ V. In paragraph (i)(1), adding the word ''Subsidized'' immediately before the words ''Federal Stafford Loans''.

■ W. In paragraph (i)(2), removing the words ''Federal Unsubsidized Stafford Loans'' and adding, in their place, the words ''Unsubsidized Federal Stafford Loans''.

The revisions read as follows:

§ 685.203 Loan limits.

(a) * * *

(1) In the case of an undergraduate student who has not successfully completed the first year of a program of undergraduate education, the total amount the student may borrow for any academic year of study under the Direct Subsidized Loan Program may not exceed the following:

* * * * *

(2) In the case of an undergraduate student who has successfully completed the first year of an undergraduate program but has not successfully completed the second year of an undergraduate program, the total amount the student may borrow for any academic year of study under the Direct Subsidized Loan Program may not exceed the following:

* * * * *

(3) In the case of an undergraduate student who has successfully completed the first and second years of a program of study of undergraduate education but has not successfully completed the remainder of the program, the total amount the student may borrow for any academic year of study under the Direct Subsidized Loan Program may not exceed the following:

* * * * *

(5) In the case of a graduate or professional student for periods of enrollment beginning before July 1, 2012, the total amount the student may borrow for any academic year of study under the Direct Subsidized Loan Program may not exceed $8,500.

(6) In the case of a student enrolled for no longer than one consecutive 12-month period in a course of study necessary for enrollment in a program leading to a degree or a certificate, the total amount the student may borrow for any academic year of study under the Direct Subsidized Loan Program may not exceed the following:

* * * * *

(7) In the case of a student who has obtained a baccalaureate degree and is enrolled or accepted for enrollment in coursework necessary for a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in that State, the total amount the student may borrow for any academic year of study under the Direct Subsidized Loan Program may not exceed $5,500.

* * * * *

(b) *Direct Unsubsidized Loans.* (1) In the case of a dependent undergraduate student, except as provided in paragraph (c)(3) of this section, the total amount a student may borrow for any academic year of study under the Direct Unsubsidized Loan Program is the same as the amount determined under paragraph (a) of this section, less any amount received under the Direct Subsidized Loan Program, plus—

(i) $2,000 for a program of study of at least a full academic year in length.

(ii) For a program of study that is one academic year or more in length with less than a full academic year remaining, the amount that is the same ratio to $2,000 as the—

Number of semester, trimester, quarter, or clock hours enrolled

---

Number of semester, trimester, quarter or clock hours in academic year

(iii) For a program of study that is less than a full academic year in length, the amount that is the same ratio to $2,000 as the lesser of the—

Number of semester, trimester, quarter, or clock hours enrolled

---

Number of semester, trimester, quarter or clock hours in academic year or Number of weeks enrolled

---

Number of weeks in academic year

(2)(i) In the case of an independent undergraduate student or certain dependent undergraduate students under the conditions specified in paragraph (c)(1)(ii) of this section, except as provided in paragraph (c)(3) of this section, the total amount the student may borrow for any period of enrollment under the Direct Unsubsidized Loan Program may not exceed the amounts determined under paragraph (a) of this section less any amount received under the Direct Subsidized Loan Program in combination with the amounts determined under paragraph (c) of this section.

(ii) In the case of a graduate or professional student for a period of enrollment beginning before July 1, 2012, the total amount the student may borrow for any academic year of study under the Direct Unsubsidized Loan Program may not exceed the amount determined under paragraph (a)(5) of this section, less any amount received under the Direct Subsidized Loan Program.

(iii) In the case of a graduate or professional student for a period of enrollment beginning on or after July 1, 2012, the total amount the student may borrow for any academic year of study under the Direct Unsubsidized Loan Program may not exceed $8,500.

(c) * * *

(1) * * *

(ii) In order for a dependent undergraduate student to receive this additional loan amount, the financial aid administrator must determine that the student's parent likely will be precluded by exceptional circumstances from borrowing under the Direct PLUS Loan Program and the student's family is otherwise unable to provide the student's expected family contribution. The financial aid administrator must base the determination on a review of the family financial information provided by the student and consideration of the student's debt burden and must document the determination in the school's file.

* * * * *

(2) The additional amount that a student described in paragraph (c)(1)(i) of this section may borrow under the Direct Unsubsidized Loan Program for any academic year of study may not exceed the following:

* * * * *

(d) *Aggregate limits for subsidized loans.* The aggregate unpaid principal amount of all Direct Subsidized Loans and Subsidized Federal Stafford Loans made to a student but excluding the amount of capitalized interest may not exceed the following:

* * * * *

(e) *Aggregate limits for unsubsidized loans.* The total amount of Direct Unsubsidized Loans, Unsubsidized Federal Stafford Loans, and Federal SLS Loans, excluding the amount of capitalized interest, may not exceed the following:

(1) For a dependent undergraduate student, $31,000 minus any Direct Subsidized Loan and Subsidized Federal Stafford Loan amounts, unless the student qualifies under paragraph (c) of this section for additional eligibility or qualified for that additional eligibility under the Federal SLS Program.

(2) For an independent undergraduate or a dependent undergraduate who qualifies for additional eligibility under paragraph (c) of this section or qualified for this additional eligibility under the Federal SLS Program, $57,500 minus any Direct Subsidized Loan and Subsidized Federal Stafford Loan amounts.

(3) For a graduate or professional student, $138,500, including any loans for undergraduate study, minus any Direct Subsidized Loan, Subsidized Federal Stafford Loan, and Federal SLS Program loan amounts.

* * * * *

■ 88. Section 685.204 is revised to read as follows:

§ 685.204 Deferment.

(a) *General.* (1) A Direct Subsidized Loan or Direct Subsidized Consolidation Loan borrower who meets the requirements described in paragraphs (b), (d), (e), (f), (g), (h), (i), and (j) of this section is eligible for a deferment during which periodic installments of principal and interest need not be paid.

(2) A Direct Unsubsidized Loan, Direct Unsubsidized Consolidation Loan, Direct PLUS Loan, or Direct PLUS Consolidation Loan borrower who meets the requirements described in paragraphs (b) through (j) of this section is eligible for a deferment during which periodic installments of principal need not be paid but interest does accrue and is capitalized or paid by the borrower. At or before the time a deferment is granted, the Secretary provides information, including an example, to assist the borrower in understanding the impact of capitalization of accrued, unpaid interest on the borrower's loan principal and on the total amount of interest to be paid over the life of the loan.

(3) A borrower whose loan is in default is not eligible for a deferment, unless the borrower has made payment arrangements satisfactory to the Secretary.

(4)(i) To receive a deferment, except as provided for in-school deferments under paragraphs (b)(2)(ii) through (iv) of this section, the borrower must request the deferment and, except as provided in paragraph (a)(5)(i) of this section, provide the Secretary with all information and documents required to establish eligibility for the deferment.

(ii) In the case of a military service deferment under paragraph (h) of this section, a borrower's representative may request the deferment and provide the required information and documents on behalf of the borrower. If the Secretary grants a military service deferment based on a request from a borrower's

representative, the Secretary notifies the borrower that the deferment has been granted and that the borrower has the option to cancel the deferment and continue to make payments on the loan. The Secretary may also notify the borrower's representative of the outcome of the deferment request.

(5)(i) After receiving a borrower's written or verbal request for a deferment, the Secretary may grant a graduate fellowship deferment under paragraph (d), a rehabilitation training deferment under paragraph (e), an unemployment deferment under paragraph (f), an economic hardship deferment under paragraph (g), a military service deferment under paragraph (h), or a post-active duty student deferment under paragraph (i) of this section if the Secretary confirms that the borrower has received a deferment on a FFEL Program loan for the same reason and during the same time period.

(ii) The Secretary will grant a deferment based on the information obtained under paragraph (a)(5)(i) of this section when determining a borrower's eligibility for a deferment, unless the Secretary, as of the date of the determination, has information indicating that the borrower does not qualify for the deferment. The Secretary will resolve any discrepant information before granting a deferment under paragraph (a)(5)(i) of this section.

(iii) If the Secretary grants a deferment under paragraph (a)(5)(i) of this section, the Secretary notifies the borrower that the deferment has been granted and that the borrower has the option to cancel the deferment and continue to make payments on the loan.

(b) *In-school deferment.* (1) A Direct Loan borrower is eligible for a deferment during any period during which—

(i) The borrower is carrying at least one-half the normal full-time work load for the course of study that the borrower is pursuing, as determined by the eligible school the borrower is attending; and

(ii) The borrower is not serving in a medical internship or residency program, except for a residency program in dentistry.

(2) For the purpose of paragraph (b)(1) of this section, the Secretary processes a deferment when—

(i) The borrower submits a request to the Secretary along with documentation verifying the borrower's eligibility;

(ii) The Secretary receives information from the borrower's school indicating that the borrower is eligible to receive a new loan;

(iii) The Secretary receives student status information from the borrower's school, either directly or indirectly, indicating that the borrower is enrolled on at least a half-time basis; or

(iv) The Secretary confirms a borrower's half-time enrollment status through the use of the National Student Loan Data System if requested to do so by the school the borrower is attending.

(3)(i) Upon notification by the Secretary that a deferment has been granted based on paragraph (b)(2)(ii), (iii), or (iv) of this section, the borrower has the option to cancel the deferment and continue to make payments on the loan.

(ii) If the borrower elects to cancel the deferment and continue to make payments on the loan, the borrower has the option to make the principal and interest payments that were deferred. If the borrower does not make the payments, the Secretary applies a deferment for the period in which payments were not made and capitalizes the interest.

(c) *In-school deferments for Direct PLUS Loan borrowers with loans first disbursed on or after July 1, 2008.* (1)(i) A student Direct PLUS Loan borrower is eligible for a deferment on a Direct PLUS Loan first disbursed on or after July 1, 2008 during the six-month period that begins on the day after the student ceases to be enrolled on at least a half-time basis at an eligible institution.

(ii) If the Secretary grants an in-school deferment to a student Direct PLUS Loan borrower in accordance with § 685.204(b)(2)(ii), (iii), or (iv), the deferment period for a Direct PLUS loan first disbursed on or after July 1, 2008 includes the six-month post-enrollment period described in paragraph (c)(1)(i) of this section.

(2) A parent Direct PLUS Loan borrower is eligible for a deferment on a Direct PLUS Loan first disbursed on or after July 1, 2008—

(i) Upon the request of the borrower, during the period when the student on whose behalf the loan was obtained is enrolled at an eligible institution on at least a half-time basis; and

(ii) Upon the request of the borrower, during the six-month period that begins on the later of the day after the student on whose behalf the loan was obtained ceases to be enrolled on at least a half-time basis or, if the parent borrower is also a student, the day after the parent borrower ceases to be enrolled on at least a half-time basis.

(d) *Graduate fellowship deferment.* (1) A Direct Loan borrower is eligible for a deferment during any period in which an authorized official of the borrower's graduate fellowship program certifies that the borrower is pursuing a course of study pursuant to an eligible graduate fellowship program in accordance with paragraph (d)(2) of this section.

(2)(i) To qualify for a deferment under paragraph (d)(1) of this section, a borrower must—

(A) Hold at least a baccalaureate degree conferred by an institution of higher education;

(B) Have been accepted or recommended by an institution of higher education for acceptance on a full-time basis into an eligible graduate fellowship program, as defined in paragraph (d)(2)(ii) of this section; and

(C) Not be serving in a medical internship or residency program, except for a residency program in dentistry.

(ii) An eligible graduate fellowship program is a fellowship program that—

(A) Provides sufficient financial support to graduate fellows to allow for full-time study for at least six months;

(B) Requires a written statement from each applicant explaining the applicant's objectives before the award of that financial support;

(C) Requires a graduate fellow to submit periodic reports, projects, or evidence of the fellow's progress; and

(D) In the case of a course of study at a foreign university, accepts the course of study for completion of the fellowship program.

(e) *Rehabilitation training program deferment.* (1) A Direct Loan borrower is eligible for a deferment during any period in which an authorized official of the borrower's rehabilitation training program certifies that the borrower is pursuing an eligible rehabilitation training program for individuals with disabilities in accordance with paragraph (e)(2) of this section.

(2) For purposes of paragraph (e)(1) of this section, an eligible rehabilitation training program for disabled individuals is a program that—

(i) Is licensed, approved, certified, or otherwise recognized as providing rehabilitation training to disabled individuals by—

(A) A State agency with responsibility for vocational rehabilitation programs;

(B) A State agency with responsibility for drug abuse treatment programs;

(C) A State agency with responsibility for mental health services programs;

(D) A State agency with responsibility for alcohol abuse treatment programs; or

(E) The Department of Veterans Affairs; and

(ii) Provides or will provide the borrower with rehabilitation services under a written plan that—

(A) Is individualized to meet the borrower's needs;

(B) Specifies the date on which the services to the borrower are expected to end; and

(C) Is structured in a way that requires a substantial commitment by the borrower to his or her rehabilitation. The Secretary considers a substantial commitment by the borrower to be a commitment of time and effort that normally would prevent an individual from engaging in full-time employment, either because of the number of hours that must be devoted to rehabilitation or because of the nature of the rehabilitation. For the purpose of this paragraph, full-time employment involves at least 30 hours of work per week and is expected to last at least three months.

(f) *Unemployment deferment.* (1) A Direct Loan borrower is eligible for a deferment during periods that, collectively, do not exceed three years in which the borrower is seeking and unable to find full-time employment.

(2) A borrower qualifies for an unemployment deferment by—

(i) Providing evidence of eligibility for unemployment benefits to the Secretary; or

(ii) Providing to the Secretary a written certification, or an equivalent as approved by the Secretary, that—

(A) The borrower has registered with a public or private employment agency, if one is available to the borrower within a 50-mile radius of the borrower's current address; and

(B) For all requests beyond the initial request, the borrower has made at least six diligent attempts during the preceding six-month period to secure full-time employment.

(3) For purposes of obtaining an unemployment deferment under paragraph (f)(2)(ii) of this section, the following rules apply:

(i) A borrower may qualify for an unemployment deferment whether or not the borrower has been previously employed.

(ii) An unemployment deferment is not justified if the borrower refuses to seek or accept employment in kinds of positions or at salary and responsibility levels for which the borrower feels overqualified by virtue of education or previous experience.

(iii) Full-time employment involves at least 30 hours of work a week and is expected to last at least 3 months.

(iv) The initial period of unemployment deferment may be granted for a period of unemployment beginning up to six months before the date the Secretary receives the borrower's request, and may be granted for up to six months after that date.

(4) The Secretary does not grant an unemployment deferment beyond the date that is six months after the date the borrower provides evidence of the borrower's eligibility for unemployment insurance benefits under paragraph (f)(2)(i) of this section or the date the borrower provides the written certification, or an approved equivalent, under paragraph (f)(2)(ii) of this section.

(g) *Economic hardship deferment.* (1)(i) A Direct Loan borrower is eligible for a deferment during periods that, collectively, do not exceed three years in which the borrower has experienced or will experience an economic hardship in accordance with paragraph (g)(2) of this section.

(ii) An economic hardship deferment is granted for periods of up to one year at a time, except that a borrower who receives a deferment under paragraph (g)(2)(iv) of this section may receive an economic hardship deferment for the lesser of the borrower's full term of service in the Peace Corps or the borrower's remaining period of economic hardship deferment eligibility under the 3-year maximum.

(2) A borrower qualifies for an economic hardship deferment if the borrower—

(i) Has been granted an economic hardship deferment under either the FFEL or the Federal Perkins Loan programs for the period of time for which the borrower has requested an economic hardship deferment for his or her Direct Loan;

(ii) Is receiving payment under a Federal or State public assistance program, such as Aid to Families with Dependent Children, Supplemental Security Income, Food Stamps, or State general public assistance;

(iii) Is working full-time (as defined in paragraph (g)(3)(iii) of this section) and has a monthly income (as defined in paragraph (g)(3)(iv) of this section) that does not exceed the greater of (as calculated on a monthly basis)—

(A) The minimum wage rate described in section 6 of the Fair Labor Standards Act of 1938; or

(B) An amount equal to 150 percent of the poverty guideline applicable to the borrower's family size (as defined in paragraph (g)(3)(v) of this section) as published annually by the Department of Health and Human Services pursuant to 42 U.S.C. 9902(2). If a borrower is not a resident of a State identified in the poverty guidelines, the poverty guideline to be used for the borrower is the poverty guideline (for the relevant family size) used for the 48 contiguous States; or

(iv) Is serving as a volunteer in the Peace Corps.

(3) The following rules apply to a deferment granted under paragraph (g)(2)(iii) of this section:

(i) For an initial period of deferment, the Secretary requires the borrower to submit evidence showing the amount of the borrower's monthly income.

(ii) To qualify for a subsequent period of deferment that begins less than one year after the end of a period of deferment under paragraph (g)(2)(iii) of this section, the Secretary requires the borrower to submit evidence showing the amount of the borrower's monthly income or a copy of the borrower's most recently filed Federal income tax return.

(iii) A borrower is considered to be working full-time if the borrower is expected to be employed for at least three consecutive months at 30 hours per week.

(iv) A borrower's monthly income is the gross amount of income received by the borrower from employment and from other sources, or one-twelfth of the borrower's adjusted gross income, as recorded on the borrower's most recently filed Federal income tax return.

(v) Family size means the number that is determined by counting the borrower, the borrower's spouse, and the borrower's children, including unborn children who will be born during the period covered by the deferment, if the children receive more than half their support from the borrower. A borrower's family size includes other individuals if, at the time the borrower requests the economic hardship deferment, the other individuals—

(A) Live with the borrower; and

(B) Receive more than half their support from the borrower and will continue to receive this support from the borrower for the year the borrower certifies family size. Support includes money, gifts, loans, housing, food, clothes, car, medical and dental care, and payment of college costs.

(h) *Military service deferment.* (1) A Direct Loan borrower is eligible for a deferment during any period in which the borrower is—

(i) Serving on active duty during a war or other military operation or national emergency, as defined in paragraph (h)(5) of this section; or

(ii) Performing qualifying National Guard duty during a war or other military operation or national emergency, as defined in paragraph (h)(5) of this section.

(2) For a borrower whose active duty service includes October 1, 2007, or begins on or after that date, the deferment period ends 180 days after the demobilization date for each period of the service described in paragraphs (h)(1)(i) and (h)(1)(ii) of this section.

(3) Without supporting documentation, the military service deferment will be granted to an otherwise eligible borrower for a period not to exceed the initial 12 months from the date the qualifying eligible service began based on a request from the borrower or the borrower's representative.

(4) The provisions of paragraph (h) of this section do not authorize the refunding of any payments made by or on behalf of a borrower during a period for which the borrower qualified for a military service deferment.

(5) As used in paragraph (h) of this section—

(i) *Serving on active duty during a war or other military operation or national emergency* means service by an individual who is—

(A) A Reserve of an Armed Force ordered to active duty under 10 U.S.C. 12301(a), 12301(g), 12302, 12304, or 12306;

(B) A retired member of an Armed Force ordered to active duty under 10 U.S.C. 688 for service in connection with a war or other military operation or national emergency, regardless of the location at which such active duty service is performed; or

(C) Any other member of an Armed Force on active duty in connection with such emergency or subsequent actions or conditions who has been assigned to a duty station at a location other than the location at which the member is normally assigned;

(ii) *Qualifying National Guard duty during a war or other operation or national emergency* means service as a member of the National Guard on full-time National Guard duty, as defined in 10 U.S.C. 101(d)(5) under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under 32 U.S.C. 502(f) in connection with a war, other military operation, or national emergency declared by the President and supported by Federal funds;

(iii) *Active duty* means active duty as defined in 10 U.S.C. 101(d)(1) except that it does not include active duty for training or attendance at a service school;

(iv) *Military operation* means a contingency operation as defined in 10 U.S.C. 101(a)(13); and

(v) *National emergency* means the national emergency by reason of certain terrorist attacks declared by the President on September 14, 2001, or subsequent national emergencies declared by the President by reason of terrorist attacks.

(i) *Post-active duty student deferment.* (1) A Direct Loan borrower is eligible for a deferment for 13 months following the conclusion of the borrower's active duty military service and any applicable grace period if—

(i) The borrower is a member of the National Guard or other reserve component of the Armed Forces of the United States or a member of such forces in retired status; and

(ii) The borrower was enrolled on at least a half-time basis in a program of instruction at an eligible institution at the time, or within six months prior to the time, the borrower was called to active duty.

(2) As used in paragraph (i)(1) of this section, ''active duty'' means active duty as defined in 10 U.S.C. 101(d)(1) for at least a 30-day period, except that—

(i) Active duty includes active State duty for members of the National Guard under which a Governor activates National Guard personnel based on State statute or policy and the activities of the National Guard are paid for with State funds;

(ii) Active duty includes full-time National Guard duty under which a Governor is authorized, with the approval of the President or the U.S. Secretary of Defense, to order a member to State active duty and the activities of the National Guard are paid for with Federal funds;

(iii) Active duty does not include active duty for training or attendance at a service school; and

(iv) Active duty does not include employment in a full-time, permanent position in the National Guard unless the borrower employed in such a position is reassigned to active duty under paragraph (i)(2)(i) of this section or full-time National Guard duty under paragraph (i)(2)(ii) of this section.

(3) If the borrower returns to enrolled student status on at least a half-time basis during the grace period or the 13-month deferment period, the deferment expires at the time the borrower returns to enrolled student status on at least a half-time basis.

(4) If a borrower qualifies for both a military service deferment and a post-active duty student deferment, the 180-day post-demobilization military service deferment period and the 13-month post-active duty student deferment period apply concurrently.

(j) *Additional deferments for Direct Loan borrowers with FFEL Program loans made before July 1, 1993.* If, at the time of application for a borrower's first Direct Loan, a borrower has an outstanding balance of principal or interest owing on any FFEL Program loan that was made, insured, or guaranteed prior to July 1, 1993, the borrower is eligible for a deferment during—

(1) The periods described in paragraphs (b) through (i) of this section; and

(2) The periods described in 34 CFR 682.210(b), including those periods that apply to a ''new borrower'' as that term is defined in 34 CFR 682.210(b)(7). (Approved by the Office of Management and Budget under control number 1845–0021)

(Authority: 20 U.S.C. 1087a *et seq.*)

■ 89. Section 685.205 is amended by:

■ A. In paragraph (a)(4), removing the word ''or'' that appears after the punctuation '';''.

■ B. Revising paragraph (a)(5).

■ C. Adding new paragraphs (a)(8) and (a)(9).

■ D. In paragraph (b)(2), removing the words ''authorized deferment period'' and adding, in their place, the words ''authorized deferment or forbearance period''.

The additions read as follows:

§ 685.205 Forbearance.

(a) * * *

(5)(i) The borrower is performing the type of service that would qualify the borrower for loan forgiveness under the requirements of the teacher loan forgiveness program in § 685.217.

(ii) Before a forbearance is granted under § 685.205(a)(5)(i), the borrower must—

(A) Submit documentation for the period of the annual forbearance request showing the beginning and ending dates that the borrower is expected to perform, for that year, the type of service described in § 685.217(c); and

(B) Certify the borrower's intent to satisfy the requirements of § 685.217(c).

(iii) The Secretary grants forbearance under paragraph (a)(5) of this section only if the Secretary believes, at the time of the borrower's annual request, that the expected forgiveness amount under § 685.217(d) will satisfy the anticipated remaining outstanding balance on the borrower's loan at the time of the expected forgiveness;

* * * * *

(8)(i) The Secretary may grant a forbearance to permit a borrower or endorser to resume honoring the agreement to repay the debt after default. The terms of the forbearance agreement in this situation must include a new agreement to repay the debt signed by the borrower or endorser or a written or oral affirmation of the borrower's or endorser's obligation to repay the debt.

(ii) If the forbearance is based on the borrower's or endorser's oral affirmation

of the obligation to repay the debt, the forbearance period is limited to 120 days, such a forbearance is not granted consecutively, and the Secretary will—

(A) Orally review with the borrower the terms and conditions of the forbearance, including the consequences of interest capitalization, and other repayment options available to the borrower;

(B) Send a notice to the borrower or endorser that confirms the terms of the forbearance and the borrower's or endorser's affirmation of the obligation to repay the debt; and

(C) Retain a record of the terms of the forbearance and affirmation in the borrower's or endorser's file.

(iii) For purposes of this section, an ''affirmation'' means an acknowledgement of the loan by the borrower or endorser in a legally binding manner. The form of the affirmation may include, but is not limited to the borrower's or endorser's—

(A) New signed repayment agreement or schedule, or another form of signed agreement to repay the debt;

(B) Oral acknowledgement and agreement to repay the debt documented by the Secretary in the borrower's or endorser's file and confirmed by the Secretary in a notice to the borrower; or

(C) A payment made on the loan by the borrower or endorser.

(9)(i) The borrower is performing the type of service that would qualify the borrower for a partial repayment of his or her loan under the Student Loan Repayment Programs administered by the Department of Defense under 10 U.S.C. 2171, 2173, 2174, or any other student loan repayment programs administered by the Department of Defense.

(ii) To receive a forbearance under this paragraph, the borrower must submit documentation showing the time period during which the Department of Defense considers the borrower to be eligible for a partial repayment of his or her loan under a student loan repayment program.

* * * * *

§ 685.206 [Amended]

■ 90. Section 685.206 is amended by:

■ A. In the introductory text of paragraph (a), removing the word ''shall'' and adding, in its place, the word ''must''.

■ B. In paragraph (b)(1), removing the word ''shall'' and adding, in its place, the word ''must''.

■ C. In paragraph (b)(2), removing the word ''shall'' and adding, in its place, the word ''must''.

■ D. In paragraph (c)(1)(iv), removing the words ''Credit bureau'' and adding, in their place, the words ''Consumer reporting agency''.

■ E. In paragraph (c)(2)(iii), removing the words ''credit bureaus'' and adding, in their place, the words ''consumer reporting agencies''.

■ 91. Section 685.207 is amended by:

■ A. Revising paragraph (a)(2).

■ B. Adding a new paragraph (a)(3).

■ C. In paragraph (b)(1)(ii), removing the citation ''§ 685.204'' and adding, in its place, the citation ''§ 685.204(b)''.

■ D. Revising paragraph (b)(3).

The revisions and addition read as follows:

§ 685.207 Obligation to repay.

(a) * * *

(2) The borrower's repayment of a Direct Loan may also be subject to the deferment provisions in § 685.204, the forbearance provisions in § 685.205, the discharge provisions in § 685.212, and the loan forgiveness provisions in §§ 685.217 and 685.219.

(3) A borrower's first payment on a Direct Loan is due within 60 days of the beginning date of the repayment period as determined in accordance with paragraph (b), (c), (d), or (e) of this section.

(b) * * *

(3)(i) A borrower is not obligated to pay interest on a Direct Subsidized Loan during periods when the borrower is enrolled at an eligible school on at least a half-time basis unless the borrower is required to make payments on the loan during those periods under paragraph (b)(1) of this section.

(ii) Except as provided in paragraph (b)(3)(iii) of this section, a borrower is not obligated to pay interest on a Direct Subsidized Loan during grace periods.

(iii) In the case of a Direct Subsidized Loan for which the first disbursement is made on or after July 1, 2012 and before July 1, 2014, a borrower is responsible for the interest that accrues during the grace period.

* * * * *

§ 685.208 [Amended]

■ 92. Section 685.208 is amended by:

■ A. In paragraph (a)(5), removing the words ''income contingent'' and adding, in their place, the words ''income-contingent''.

■ B. In paragraph (j)(1), removing the word ''then'' and adding, in its place, the word ''than''.

■ C. In paragraph (m)(1), adding the words ''or, for a new borrower as of July 1, 2014, as defined in § 685.221(a)(4), 10 percent'' immediately after the words ''15 percent''.

■ 93. Section 685.210 is amended by:

■ A. Revising paragraph (a)(2).

■ B. Revising the introductory text of paragraph (b)(1).

■ C. Revising paragraph (b)(1)(i).

■ D. In paragraph (b)(2)(i), removing the words ''income contingent'' and adding, in their place, the words ''income-contingent''.

The revisions read as follows:

§ 685.210 Choice of repayment plan.

(a) * * *

(2) If a borrower does not select a repayment plan, the Secretary designates the standard repayment plan described in § 685.208(b) or (c) for the borrower, as applicable.

(b) * * *

(1) A borrower may change repayment plans at any time after the loan has entered repayment by notifying the Secretary. However, a borrower who is repaying a defaulted loan under an income-contingent repayment plan or the income-based repayment plan in accordance with § 685.211(d)(3)(ii), or who is repaying a Direct Consolidation Loan under the income-contingent repayment plan or the income-based repayment plan in accordance with § 685.220(d)(1)(ii)(A)(*3*) may not change to another repayment plan unless—

(i) The borrower was required to and did make a payment under the income-contingent repayment plan or income-based repayment plan in each of the prior three months; or

* * * * *

■ 94. Section 685.211 is amended by:

■ A. In paragraph (d)(3)(i), removing the words ''national credit bureaus'' and adding, in their place, the words ''nationwide consumer reporting agencies''.

■ B. In paragraph (d)(3)(ii), removing the words ''income contingent'' and adding, in their place, the words ''income-contingent''.

■ C. Revising paragraph (f).

The revision reads as follows:

§ 685.211 Miscellaneous repayment provisions.

* * * * *

(f) *Rehabilitation of defaulted loans.* (1) A defaulted Direct Loan, except for a loan on which a judgment has been obtained, is rehabilitated if the borrower makes 9 voluntary, reasonable and affordable monthly payments within 20 days of the due date during 10 consecutive months. The Secretary determines the amount of a borrower's reasonable and affordable payment on the basis of a borrower's total financial circumstances.

(i) For the purposes of this section, the borrower's reasonable and affordable payment amount, as determined by the

Secretary, is based solely on information provided on a form approved by the Secretary and, if requested, supporting documentation from the borrower and other sources, and considers—

(A) The borrower's, and if applicable, the spouse's current disposable income, including public assistance payments, and other income received by the borrower and the spouse, such as welfare benefits, Social Security benefits, Supplemental Security Income, and workers' compensation. Spousal income is not considered if the spouse does not contribute to the borrower's household income;

(B) Family size as defined in § 685.221(a)(3); and

(C) Reasonable and necessary expenses, which include—

(*1*) Food;

(*2*) Housing;

(*3*) Utilities;

(*4*) Basic communication expenses;

(*5*) Necessary medical and dental costs;

(*6*) Necessary insurance costs;

(*7*) Transportation costs;

(*8*) Dependent care and other work-related expenses;

(*9*) Legally required child and spousal support;

(*10*) Other title IV and non-title IV student loan payments; and

(*11*) Other expenses approved by the Secretary.

(ii) The reasonable and affordable payment amount must not be—

(A) A required minimum loan payment amount (*e.g.* $50) if the Secretary determines that a smaller amount is reasonable and affordable;

(B) A percentage of the borrower's total loan balance; or

(C) Based on other criteria unrelated to the borrower's total financial circumstances.

(iii) Within 15 business days of the Secretary's determination of the borrower's reasonable and affordable payment amount, the Secretary provides the borrower with a written rehabilitation agreement which includes the borrower's reasonable and affordable payment amount, a prominent statement that the borrower may object orally or in writing to the reasonable and affordable payment amount with the method and timeframe for raising such an objection, and an explanation of any other terms and conditions applicable to the required series of payments that must be made. The Secretary does not impose any other conditions unrelated to the amount or timing of the rehabilitation payments in the rehabilitation agreement. The written rehabilitation agreement informs the borrower of the effects of having the loans rehabilitated (*e.g.,* removal of the record of default from the borrower's credit history and return to normal repayment).

(2) The Secretary provides the borrower with a written statement confirming the borrower's reasonable and affordable payment amount, as determined by the Secretary, and explaining any other terms and conditions applicable to the required series of payments that must be made before the borrower's account can be rehabilitated. The statement informs the borrower that the borrower may object to the terms and conditions of the rehabilitation agreement, and explains the method and timeframe for objecting to the terms and conditions of the rehabilitation agreement.

(3) If the borrower objects to the monthly payment amount determined under paragraph (f)(1) of this section, the Secretary recalculates the payment amount by using the monthly payment calculation rules in § 685.221(b)(1) and § 685.221(b)(2), except that if the calculated amount under these sections is less than $5, the monthly rehabilitation payment is $5.

(4) The Secretary provides the borrower with a written statement confirming the borrower's recalculated reasonable and affordable payment amount.

(5) If the borrower objects to the monthly payment amount determined under paragraph (f)(1) of this section, but does not provide the documentation required to calculate a monthly payment amount under § 685.221(b)(1) and § 685.221(b)(2), no rehabilitation agreement exists between the borrower and the Secretary, and the rehabilitation does not proceed.

(6) The Secretary includes any payment made under § 682.401(b)(1) in determining whether the 9 out of 10 payments required under paragraph (f)(1) of this section have been made.

(7) A borrower may request that the monthly payment amount be adjusted due to a change in the borrower's total financial circumstances only upon providing the documentation specified in paragraph (f)(1)(i) of this section.

(8) During the rehabilitation period, the Secretary limits contact with the borrower on the loan being rehabilitated to collection activities that are required by law or regulation and to communications that support the rehabilitation.

(9) If a defaulted loan is rehabilitated, the Secretary instructs any consumer reporting agency to which the default was reported to remove the default from the borrower's credit history.

(10) A defaulted Direct Loan on which a judgment has been obtained may not be rehabilitated.

(11) A Direct Loan obtained by fraud for which the borrower has been convicted of, or has pled nolo contendere or guilty to, a crime involving fraud in obtaining title IV, HEA program assistance may not be rehabilitated.

(12)(i) If a borrower's loan is being collected by administrative wage garnishment while the borrower is also making monthly payments on the same loan under a loan rehabilitation agreement, the Secretary continues collecting the loan by administrative wage garnishment until the borrower makes five qualifying monthly payments under the rehabilitation agreement. After the borrower makes the fifth qualifying monthly payment, the Secretary, unless otherwise directed by the borrower, suspends collecting the loan by administrative wage garnishment.

(ii) A borrower may only obtain the benefit of a suspension of administrative wage garnishment while also attempting to rehabilitate a defaulted loan once.

(13) Effective for any defaulted Direct Loan that is rehabilitated on or after August 14, 2008, the borrower cannot rehabilitate the loan again if the loan returns to default status following the rehabilitation.

* * * * *

§ 685.212 [Amended]

■ 95. Section 685.212 is amended by:

■ A. In paragraph (a)(3), removing the words ''Direct PLUS Consolidation Loan'' and adding, in their place, the words ''Direct Consolidation Loan''.

■ B. In paragraph (b), removing the citation ''§ 685.213(c)'' and adding, in its place, the citation ''§ 685.213''.

■ 96. Section 685.214 is amended by:

■ A. Revising paragraph (a)(2)(ii).

■ B. Revising paragraph (b)(4).

■ C. Revising paragraph (c).

■ D. In paragraph (d)(1), removing the word ''shall'' each time it appears and adding, in its place, the word ''must''.

■ E. In paragraph (f)(1), removing the number and words ''90 days'' and adding, in their place, the number and words ''120 days''.

The revisions read as follows:

§ 685.214 Closed school discharge.

(a) * * *

(2) * * *

(ii) ''School'' means a school's main campus or any location or branch of the main campus, regardless of whether the school or its location or branch is considered eligible.

(b) * * *

(4) The Secretary reports the discharge of a loan under this section to all consumer reporting agencies to which the Secretary previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan.

(c) *Borrower qualification for discharge.* (1) In order to qualify for discharge of a loan under this section, a borrower must submit to the Secretary a written request and sworn statement, and the factual assertions in the statement must be true. The statement need not be notarized but must be made by the borrower under penalty of perjury. In the statement, the borrower must—

(i) State that the borrower (or the student on whose behalf a parent borrowed)—

(A) Received the proceeds of a loan, in whole or in part, on or after January 1, 1986 to attend a school;

(B) Did not complete the program of study at that school because the school closed while the student was enrolled, or the student withdrew from the school not more than 120 days before the school closed. The Secretary may extend the 120-day period if the Secretary determines that exceptional circumstances related to a school's closing justify an extension. Exceptional circumstances for this purpose may include, but are not limited to: the school's loss of accreditation; the school's discontinuation of the majority of its academic programs; action by the State to revoke the school's license to operate or award academic credentials in the State; or a finding by a State or Federal government agency that the school violated State or Federal law; and

(C) Did not complete the program of study through a teach-out at another school or by transferring academic credits or hours earned at the closed school to another school;

(ii) State whether the borrower (or student) has made a claim with respect to the school's closing with any third party, such as the holder of a performance bond or a tuition recovery program, and, if so, the amount of any payment received by the borrower (or student) or credited to the borrower's loan obligation; and

(iii) State that the borrower (or student)—

(A) Agrees to provide to the Secretary upon request other documentation reasonably available to the borrower that demonstrates that the borrower meets the qualifications for discharge under this section; and

(B) Agrees to cooperate with the Secretary in enforcement actions in accordance with paragraph (d) of this section and to transfer any right to recovery against a third party to the Secretary in accordance with paragraph (e) of this section.

(2) The Secretary may discharge a loan under this section without an application from the borrower if the Secretary determines, based on information in the Secretary's possession, that the borrower qualifies for the discharge.

* * * * *

■ 97. Section 685.215 is amended by:

■ A. In paragraph (a)(1)(iv), removing the citation ''§ 682.402(e)(14)'' and adding, in its place, the words ''paragraph (c)(4)(ii) of this section''.

■ B. Revising paragraph (b)(5).

■ C. In the introductory text of paragraph (c), removing the word ''shall'' each time it appears and adding, in its place, the word ''must''.

■ D. In the introductory text of paragraph (c)(1), removing the word ''shall'' and adding, in its place, the word ''must''.

■ E. In the introductory text of paragraph (c)(2), removing the word ''shall'' and adding, in its place, the word ''must''.

■ F. In the introductory text of paragraph (c)(3), removing the word ''shall'' and adding, in its place, the word ''must''.

■ G. Revising paragraph (c)(4).

■ H. In paragraph (c)(5), removing the word ''shall'' and adding, it its place, the word ''must''.

I. In the introductory text of paragraph (c)(6), removing the word ''shall'' and adding, in its place, the word ''must''.

The revisions read as follows:

§ 685.215 Discharge for false certification of student eligibility or unauthorized payment.

* * * * *

(b) * * *

(5) The Secretary reports the discharge under this section to all consumer reporting agencies to which the Secretary previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan.

(c) * * *

(4) *Identity theft.* (i) In the case of an individual whose eligibility to borrow was falsely certified because he or she was a victim of the crime of identity theft and is requesting a discharge, the individual must—

(A) Certify that the individual did not sign the promissory note, or that any other means of identification used to obtain the loan was used without the authorization of the individual claiming relief;

(B) Certify that the individual did not receive or benefit from the proceeds of the loan with knowledge that the loan had been made without the authorization of the individual;

(C) Provide a copy of a local, State, or Federal court verdict or judgment that conclusively determines that the individual who is named as the borrower of the loan was the victim of a crime of identity theft; and

(D) If the judicial determination of the crime does not expressly state that the loan was obtained as a result of the crime of identity theft, provide—

(*1*) Authentic specimens of the signature of the individual, as provided in paragraph (c)(2)(ii) of this section, or of other means of identification of the individual, as applicable, corresponding to the means of identification falsely used to obtain the loan; and

(*2*) A statement of facts that demonstrate, to the satisfaction of the Secretary, that eligibility for the loan in question was falsely certified as a result of the crime of identity theft committed against that individual.

(ii)(A) For purposes of this section, identity theft is defined as the unauthorized use of the identifying information of another individual that is punishable under 18 U.S.C. 1028, 1028A, 1029, or 1030, or substantially comparable State or local law.

(B) Identifying information includes, but is not limited to—

(*1*) Name, Social Security number, date of birth, official State or government issued driver's license or identification number, alien registration number, government passport number, and employer or taxpayer identification number;

(*2*) Unique biometric data, such as fingerprints, voiceprint, retina or iris image, or unique physical representation;

(*3*) Unique electronic identification number, address, or routing code; or

(*4*) Telecommunication identifying information or access device (as defined in 18 U.S.C. 1029(e)).

* * * * *

§ 685.216 [Amended]

■ 98. Section 685.216(b)(2) is amended by removing the word ''credit'' and adding, in its place, the word ''consumer''.

■ 99. Section 685.217 is amended by:

■ A. Revising paragraph (a)(1).

■ B. In the last sentence of paragraph (a)(2)(i), adding the word ''for'' immediately before the words ''an eligible educational service agency''.

■ C. In paragraph (a)(2)(iii), removing the word ''at'' each time it appears and adding, in its place, the word ''for''.

■ D. In paragraph (a)(3), removing the words ''FFEL and Direct Loan'' and adding, in their place, the words ''Direct Loan and FFEL''.
■ E. In the introductory text of paragraph (a)(4), removing the words ''FFEL and Direct Loan'' and adding, in their place, the words ''Direct Loan and FFEL''.
■ F. In paragraph (a)(4)(i), removing the word ''at'' the second time it appears and adding, in its place, the word ''by''.
■ G. In paragraph (a)(4)(ii), adding the words ''by an eligible'' immediately before the words ''educational service agency''.
■ H. In the introductory text of paragraph (c)(1), adding the word ''by'' immediately before the words ''an educational service agency''.
■ I. In paragraph (c)(1)(iii), removing the sentence ''The Secretary considers all elementary and secondary schools operated by the Bureau of Indian Education (BIE) or operated on Indian reservations by Indian tribal groups under contract with the BIE to qualify as schools serving low-income students.''
■ J. Redesignating paragraphs (c)(2) through (c)(11) as paragraphs (c)(3) through (c)(12), respectively.
■ K. Adding a new paragraph (c)(2).
■ L. In redesignated paragraph (c)(4)(ii)(A), removing the word ''at'' the second time it appears and adding, in its place, the word ''for''.
■ M. In redesignated paragraph (c)(4)(ii)(B), adding the words ''for an eligible'' immediately before the words ''educational service agency''.
■ N. In redesignated paragraph (c)(4)(iii), removing the word ''at'' each time it appears and adding, in its place, the word ''for''.
■ O. In redesignated paragraph (c)(5)(i), adding the words ''for an eligible'' immediately before the words ''educational service agency''.
■ P. In redesignated paragraph (c)(5)(ii)(A), removing the word ''at'' the second time it appears and adding, in its place, the word ''for''.
■ Q. In redesignated paragraph (c)(5)(ii)(B), adding the words ''for an eligible'' immediately before the words ''educational service agency''.
■ R. In redesignated paragraph (c)(5)(iii), removing the word ''at'' each time it appears and adding, in its place, the word ''for''.
■ S. Revising the introductory text of redesignated paragraph (c)(7).
■ T. Revising redesignated paragraph (c)(9).
■ U. Revising redesignated paragraph (c)(10).
■ V. Adding a new paragraph (c)(13).
■ W. Revising paragraph (d)(1).
■ X. In paragraph (d)(2), removing the words ''paragraphs (c)(3)(ii) or (c)(4)(ii)'' and adding, in their place, the words ''paragraph (c)(4)(ii) or (c)(5)(ii)''.

The revisions and addition read as follows:

§ 685.217 Teacher loan forgiveness program.

(a) * * *

(1) The teacher loan forgiveness program is intended to encourage individuals to enter and continue in the teaching profession. For new borrowers, the Secretary repays the amount specified in this paragraph (a) on the borrower's Direct Subsidized Loans, Direct Unsubsidized Loans, Subsidized and Unsubsidized Federal Stafford Loans, and in certain cases, Direct Consolidation Loans or Federal Consolidation Loans. The forgiveness program is only available to a borrower who has no outstanding loan balance under the Direct Loan Program or the FFEL Program on October 1, 1998 or who has no outstanding loan balance on the date he or she obtains a loan after October 1, 1998.

* * * * *

(c) * * *

(2) The Secretary considers all elementary and secondary schools operated by the Bureau of Indian Education (BIE) or operated on Indian reservations by Indian tribal groups under contract with the BIE to qualify as schools serving low-income students.

* * * * *

(7) For teacher loan forgiveness applications received by the Secretary on or after July 1, 2006, a teacher in a private, non-profit elementary or secondary school who is exempt from State certification requirements (unless otherwise applicable under State law) may qualify for loan forgiveness under paragraphs (c)(4)(ii) or (c)(5) of this section if—

* * * * *

(9) A borrower's period of postsecondary education, qualifying FMLA condition, or military active duty as described in paragraph (c)(8) of this section, including the time necessary for the borrower to resume qualifying teaching no later than the beginning of the next regularly scheduled academic year, does not constitute a break in the required five consecutive years of qualifying teaching service.

(10) A borrower who was employed as a teacher at more than one qualifying school, for more than one qualifying educational service agency, or a combination of both during an academic year and demonstrates that the combined teaching was the equivalent of full-time, as supported by the certification of one or more of the chief administrative officers of the schools or educational service agencies involved, is considered to have completed one academic year of qualifying teaching.

* * * * *

(13) A borrower may request forbearance during each of the five years of qualifying teaching service in accordance with § 685.205(a)(5).

(d) * * *

(1) A qualified borrower is eligible for forgiveness of up to $5,000, or up to $17,500 if the borrower meets the requirements of paragraph (c)(4)(ii) or (c)(5)(ii) of this section. The forgiveness amount is deducted from the aggregate amount of the borrower's Direct Subsidized Loan or Direct Unsubsidized Loan or Direct Consolidation Loan obligation that is outstanding after the borrower completes his or her fifth consecutive complete academic year of teaching as described in paragraph (c) of this section. Only the outstanding portion of the Direct Consolidation Loan that was used to repay an eligible Direct Subsidized Loan, an eligible Direct Unsubsidized Loan, or an eligible Subsidized or Unsubsidized Federal Stafford Loan qualifies for loan forgiveness under this section.

* * * * *

■ 100. Section 685.218 is amended by:
■ A. In paragraph (b)(4), removing the words ''FFEL or Direct'' and adding, in their place, the words ''Direct or FFEL''.
■ B. Revising paragraph (d)(3).
■ C. In paragraph (d)(6), removing the words ''a Perkins Loan, a FFEL Program loan, or another Direct Loan'' and adding, in their place, the words ''another Direct Loan, a FFEL Program Loan, or a Perkins Loan''.
■ D. In paragraph (d)(7), removing the words ''a FFEL Program Loan or another Direct Loan'' and adding, in their place, ''another Direct Loan or a FFEL Program Loan''.
■ E. In paragraph (e)(1)(ii), removing the number and word ''24 hours'' each time they appear and adding, in their place, the number and word ''72 hours''.
■ F. Revising paragraph (f)(4)(iii).
■ G. In paragraph (g)(2)(i), removing the words ''Direct Loans'' and adding, in their place, the words ''Direct Loan''.

The revisions read as follows:

§ 685.218 Discharge of student loan indebtedness for survivors of victims of the September 11, 2001, attacks.

* * * * *

(d) * * *

(3) If the individual owed a Direct Loan, a FFEL Program Loan, or a Perkins Loan at the time of the terrorist attacks on September 11, 2001,

documentation that the individual's loans were discharged by the Secretary, the lender, or the institution due to death may be substituted for the original or certified copy of a death certificate.

* * * * *

(f) * * *

(4) * * *

(iii) Copies of approved joint Direct Loan or FFEL Consolidation Loan applications or an approved Direct or FFEL PLUS Loan application.

* * * * *

■ 101. Section 685.220, as amended by:

A. Revising paragraph (b).

■ B. Revising paragraph (c).

■ C. Revising paragraph (d).

■ D. In paragraph (e), removing the word ''shall'' and adding, it its place, the word ''must''.

■ E. In paragraph (f)(1)(i), removing the word ''shall'' and adding, it its place, the word ''must''.

■ F. Revising paragraph (f)(1)(iii).

■ G. In paragraph (f)(2), removing the word ''shall'' each time it appears and adding, in its place, the word ''must''.

■ H. In paragraph (f)(4), removing the word ''shall'' and adding, it its place, the word ''must''.

■ I. In paragraph (f)(5), removing the word ''shall'' and adding, in its place, the word ''must''.

■ J. Revising paragraph (h).

■ K. In paragraph (i)(2)(ii), removing the words ''(i)(3)(1) and (ii)'' and adding, in their place, the words ''(i)(3)(i) through (iii)''.

■ L. Revising paragraph (i)(4).

■ M. In paragraph (k), removing the word ''shall'' and adding, in its place, the word ''must''.

The revisions read as follows:

§ 685.220 Consolidation.

(a) * * *

(b) *Loans eligible for consolidation.* The following loans may be consolidated into a Direct Consolidation Loan:

(1) Subsidized Federal Stafford Loans.

(2) Guaranteed Student Loans.

(3) Federal Insured Student Loans (FISL).

(4) Direct Subsidized Loans.

(5) Direct Subsidized Consolidation Loans.

(6) Federal Perkins Loans.

(7) National Direct Student Loans (NDSL).

(8) National Defense Student Loans (NDSL).

(9) Federal PLUS Loans.

(10) Parent Loans for Undergraduate Students (PLUS).

(11) Direct PLUS Loans.

(12) Direct PLUS Consolidation Loans.

(13) Federal Consolidation Loans.

(14) Unsubsidized Federal Stafford Loans.

(15) Federal Supplemental Loans for Students (SLS).

(16) Direct Unsubsidized Loans.

(17) Direct Unsubsidized Consolidation Loans.

(18) Auxiliary Loans to Assist Students (ALAS).

(19) Health Professions Student Loans (HPSL) and Loans for Disadvantaged Students (LDS) made under subpart II of part A of title VII of the Public Health Service Act.

(20) Health Education Assistance Loans (HEAL).

(21) Nursing loans made under subpart II of part B of title VIII of the Public Health Service Act.

(c) *Components of Direct Consolidation Loans.* (1) *Subsidized component of Direct Consolidation Loans.* The term ''Direct Subsidized Consolidation Loan'' refers to the portion of a Direct Consolidation Loan attributable to—

(i) The loans identified in paragraphs (b)(1) through (b)(5) of this section; and

(ii) The portion of a Federal Consolidation Loan under paragraph (b)(13) of this section that is eligible for interest benefits during a deferment period under section 428C(b)(4)(C) of the Act.

(2) *Unsubsidized component of Direct Consolidation Loans.* Except as provided in paragraph (c)(3) of this section, the term ''Direct Unsubsidized Consolidation Loan'' refers to the portion of a Direct Consolidation Loan attributable to—

(i) The loans identified in paragraphs (b)(6) through (b)(12) of this section;

(ii) The portion of a Federal Consolidation Loan under paragraph (b)(13) of this section that is not eligible for interest benefits during a deferment period under section 428C(b)(4)(C) of the Act; and

(iii) The loans identified in paragraphs (b)(14) through (b)(21) of this section.

(3) *PLUS component of Direct Consolidation Loans.* In the case of a Direct Consolidation Loan made before July 1, 2006, the term ''Direct PLUS Consolidation Loan'' refers to the portion of a Direct Consolidation Loan attributable to the loans identified in paragraphs (b)(9) through (b)(12) of this section.

(d) *Eligibility for a Direct Consolidation Loan.* (1) A borrower may obtain a Direct Consolidation Loan if the borrower meets the following requirements:

(i) The borrower consolidates at least one Direct Loan Program or FFEL Program loan.

(ii) On the loans being consolidated, the borrower is—

(A) At the time the borrower applies for the Direct Consolidation Loan—

(*1*) In the grace period;

(*2*) In a repayment period but not in default; or

(*3*) In default but has made satisfactory repayment arrangements in accordance with paragraph (2) of the definition of that term in § 685.102(b);

(B) Not subject to a judgment secured through litigation, unless the judgment has been vacated; or

(C) Not subject to an order for wage garnishment under section 488A of the Act, unless the order has been lifted.

(iii) The borrower agrees to notify the Secretary of any change in address.

(2) A borrower may not consolidate a Direct Consolidation Loan or a Federal Consolidation Loan into a new consolidation loan under this section unless at least one additional eligible loan is included in the consolidation, except that a borrower may consolidate a Federal Consolidation Loan into a new consolidation loan under this section without including any additional loans if—

(i) The borrower has a Federal Consolidation Loan that is in default or has been submitted to the guaranty agency by the lender for default aversion, and the borrower wants to consolidate the Federal Consolidation Loan into the Direct Loan Program for the purpose of obtaining an income-contingent repayment plan or an income-based repayment plan; or

(ii) The borrower has a Federal Consolidation Loan and the borrower wants to consolidate that loan into the Direct Loan Program for the purpose of using the Public Service Loan Forgiveness Program or the no accrual of interest benefit for active duty service.

(3) Eligible loans received before or after the date a Direct Consolidation Loan is made may be added to a subsequent Direct Consolidation Loan.

* * * * *

(f) * * *

(1) * * *

(iii) For a Direct Loan Program or FFEL Program loan that is in default, the Secretary limits collection costs that may be charged to the borrower to a maximum of 18.5 percent of the outstanding principal and interest amount of the defaulted loan. For any other defaulted Federal education loan, all collection costs that are owed may be charged to the borrower.

* * * * *

(h) *Repayment plans.* A borrower may choose a repayment plan for a Direct

Consolidation Loan in accordance with § 685.208, and may change repayment plans in accordance with § 685.210(b).

(i) * * *

(4) A Direct Consolidation Loan that was made based on an application received before July 1, 2006 receives a grace period if it includes a Direct Loan Program or FFEL Program loan for which the borrower was in an in-school period at the time of consolidation. The repayment period begins the day after the grace period ends.

* * * * *

■ 102. Section 685.300 is amended by:

■ A. Revising paragraph (a).

■ B. In the introductory text of paragraph (b), removing the word ''shall'' each time it appears and adding, in its place, the word ''must''.

■ C. Removing paragraph (b)(8).

■ D. Redesignating paragraphs (b)(5), (6), and (7) as paragraphs (b)(6), (7), and (8), respectively.

■ E. Adding a new paragraph (b)(5).

■ F. Revising paragraph (c).

The revisions and addition read as follows:

§ 685.300 Agreements between an eligible school and the Secretary for participation in the Direct Loan Program.

(a) *General.* Participation of a school in the Direct Loan Program means that eligible students at the school may receive Direct Loans. To participate in the Direct Loan Program, a school must—

(1) Demonstrate to the satisfaction of the Secretary that the school meets the requirements for eligibility under the Act and applicable regulations; and

(2) Enter into a written program participation agreement with the Secretary.

(b) * * *

(5) On a monthly basis, reconcile institutional records with Direct Loan funds received from the Secretary and Direct Loan disbursement records submitted to and accepted by the Secretary;

* * * * *

(c) *Origination.* A school that originates loans in the Direct Loan Program must originate loans to eligible students and parents in accordance with part D of the Act. The note or evidence of the borrower's obligation on the loan originated by the school is the property of the Secretary.

* * * * *

■ 103. Section 685.301 is amended by:

■ A. In paragraph (a)(1), removing the word ''shall'' each time it appears and adding, in its place, the word ''must''.

■ B. In the introductory text of paragraph (a)(2), removing the word ''shall'' and adding, in its place, the word ''must''.

■ C. In paragraph (a)(2)(iii), adding the words '', as determined in accordance with § 685.303(d)'' at the end of the paragraph, immediately after the words ''the loan proceeds''.

■ D. Revising paragraph (a)(10).

■ E. Removing paragraphs (b) and (e).

■ F. Revising paragraph (c).

■ G. Redesignating paragraph (d) as paragraph (b).

The revisions read as follows:

§ 685.301 Origination of a loan by a Direct Loan Program school.

(a) * * *

(10)(i) The minimum period of enrollment for which a school may originate a Direct Loan is—

(A) At a school that measures academic progress in credit hours and uses a semester, trimester, or quarter system, or that has terms that are substantially equal in length with no term less than nine weeks in length, a single academic term (e.g., a semester or quarter); or

(B) Except as provided in paragraph (a)(10)(ii) or (iii) of this section, at a school that measures academic progress in clock hours, or measures academic progress in credit hours but does not use a semester, trimester, or quarter system and does not have terms that are substantially equal in length with no term less than nine weeks in length, the lesser of—

(*1*) The length of the student's program (or the remaining portion of that program if the student has less than the full program remaining) at the school; or

(*2*) The academic year as defined by the school in accordance with 34 CFR 668.3.

(ii) For a student who transfers into a school from another school and the prior school originated a loan for a period of enrollment that overlaps the period of enrollment at the new school, the new school may originate a loan for the remaining portion of the program or academic year. In this case the school may originate a loan for an amount that does not exceed the remaining balance of the student's annual loan limit.

(iii) For a student who completes a program at a school, where the student's last loan to complete that program had been for less than an academic year, and the student then begins a new program at the same school, the school may originate a loan for the remainder of the academic year. In this case the school may originate a loan for an amount that does not exceed the remaining balance of the student's annual loan limit at the loan level associated with the new program.

(iv) The maximum period for which a school may originate a Direct Loan is—

(A) Generally an academic year, as defined by the school in accordance with 34 CFR 668.3, except that the school may use a longer period of time corresponding to the period to which the school applies the annual loan limits under § 685.203; or

(B) For a defaulted borrower who has regained eligibility, the academic year in which the borrower regained eligibility.

* * * * *

(c) *Reporting to the Secretary.* The Secretary accepts a student's Payment Data that is submitted in accordance with procedures established through publication in the **Federal Register**, and that contains information the Secretary considers to be accurate in light of other available information including that previously provided by the student and the institution.

* * * * *

■ 104. Section 685.303 is amended by:

■ A. In paragraph (a), removing the word ''shall'' and adding, in its place, the word ''must''.

■ B. Revising paragraph (b)(1).

■ C. Redesignating paragraphs (b)(2) through (b)(4) as paragraphs (b)(3) through (b)(5), respectively.

■ D. Adding a new paragraph (b)(2).

■ E. Revising redesignated paragraph (b)(3)(i).

■ F. Revising redesignated paragraph (b)(3)(ii).

■ G. Revising redesignated paragraph (b)(5)(i) introductory text.

■ H. In redesignated paragraph (b)(5)(i)(A)(*1*), removing the citation ''(b)(4)(i)(A)(*2*)'' and adding, in its place, the citation ''(b)(5)(i)(A)(*2*)''.

■ I. Revising redesignated paragraph (b)(5)(ii).

■ J. In redesignated paragraph (b)(5)(iii), removing the citation ''(b)(4)(i)(B)'' and adding, in its place, the citation ''(b)(5)(i)(B)''.

■ K. In paragraph (c), removing the word ''shall'' and adding, in its place, the word ''must''.

■ L. Redesignating paragraphs (d) and (e) as paragraphs (f) and (g), respectively.

■ M. Adding a new paragraph (d).

■ N. Adding a new paragraph (e).

■ O. Revising redesignated paragraph (g).

■ P. Adding an authority citation after the OMB control number parenthetical at the end of the section.

The revisions and additions read as follows:

§ 685.303 Processing loan proceeds.

* * * * *

(b) * * *

(1) A school may not disburse loan proceeds to a borrower unless the borrower has executed a legally enforceable promissory note.

(2) The Secretary provides Direct Loan funds to a school in accordance with 34 CFR 668.162.

(3)(i) Except in the case of a late disbursement under paragraph (f) of this section, or as provided in paragraph (b)(3)(iii) of this section, a school may disburse loan proceeds only to a student, or a parent in the case of a Direct PLUS Loan obtained by a parent borrower, if the school determines the student has continuously maintained eligibility in accordance with the provisions of § 685.200 from the beginning of the loan period for which the loan was intended.

(ii) If a student delays attending school for a period of time, the school may consider that student to have maintained eligibility for the loan from the first day of the period of enrollment. However, the school must comply with the requirements under paragraph (b)(4) of this section.

* * * * *

(5)(i) If a student is enrolled in the first year of an undergraduate program of study and has not previously received a Direct Subsidized Loan, a Direct Unsubsidized Loan, a Subsidized or Unsubsidized Federal Stafford Loan, or a Federal Supplemental Loan for Students, a school may not disburse the proceeds of a Direct Subsidized or Direct Unsubsidized Loan until 30 days after the first day of the student's program of study unless—

* * * * *

(ii) Paragraphs (b)(5)(i)(A) and (B) of this section do not apply to any loans originated by the school beginning 30 days after the date the school receives notification from the Secretary of a cohort default rate, calculated under subpart M or subpart N of 34 CFR part 668, that causes the school to no longer meet the qualifications outlined in paragraph (b)(5)(i)(A) or (B) of this section, as applicable.

* * * * *

(d) *Determining disbursement dates and amounts.* (1) Before disbursing a loan, a school must determine that all information required by the promissory note has been provided by the borrower and, if applicable, the student.

(2) An institution must disburse the loan proceeds on a payment period basis in accordance with 34 CFR 668.164(b).

(3) Unless paragraph (d)(4) or (d)(6) of this section applies—

(i) If a loan period is more than one payment period, the school must disburse loan proceeds at least once in each payment period; and

(ii) If a loan period is one payment period, the school must make at least two disbursements during that payment period.

(A) For a loan originated under § 685.301(a)(10)(i)(A), the school may not make the second disbursement until the calendar midpoint between the first and last scheduled days of class of the loan period.

(B) For a loan originated under § 685.301(a)(10)(i)(B), the school may not make the second disbursement until the student successfully completes half of the number of credit hours or clock hours and half of the number of weeks of instructional time in the payment period.

(4)(i) If one or more payment periods have elapsed before a school makes a disbursement, the school may include in the disbursement loan proceeds for completed payment periods.

(ii) If the loan period is equal to one payment period and more than one-half of it has elapsed, the school may include in the disbursement loan proceeds for the entire payment period.

(5) The school must disburse loan proceeds in substantially equal installments, and no installment may exceed one-half of the loan.

(6)(i) A school is not required to make more than one disbursement if—

(A)(*1*) The loan period is not more than one semester, one trimester, one quarter, or, for non term-based schools or schools with non-standard terms, 4 months; and

(*2*)(*i*) Except as provided in paragraph (d)(6)(i)(A)(*2*)(*ii*) of this section, the school has a cohort default rate, calculated under subpart M of 34 CFR part 668 of less than 10 percent for each of the three most recent fiscal years for which data are available; or

(*ii*) For loan disbursements made on or after October 1, 2011, the school in which the student is enrolled has a cohort default rate, calculated under either subpart M or subpart N of 34 CFR part 668, of less than 15 percent for each of the three most recent fiscal years for which data are available; or

(B) The school is an eligible home institution originating a loan to cover the cost of attendance in a study abroad program and has a cohort default rate, calculated under subpart M or subpart N of 34 CFR part 668, of less than five percent for the single most recent fiscal year for which data are available.

(ii) Paragraphs (d)(6)(i)(A) and (B) of this section do not apply to any loans originated by the school beginning 30 days after the date the school receives notification from the Secretary of a cohort default rate, calculated under subpart M or subpart N of 34 CFR part 668, that causes the school to no longer meet the qualifications outlined in paragraph (d)(6)(i)(A) or (B) of this section, as applicable.

(iii) Paragraph (d)(6)(i)(B) of this section does not apply to any loans originated by the school beginning 30 days after the date the school receives notification from the Secretary of a cohort default rate, calculated under subpart M or subpart N of 34 CFR part 668, that causes the school to no longer meet the qualifications outlined in that paragraph.

(e) *Annual loan limit progression based on completion of an academic year.* (1) If a school measures academic progress in an educational program in credit hours and uses either standard terms (semesters, trimesters, or quarters) or nonstandard terms that are substantially equal in length, and each term is at least nine weeks of instructional time in length, a student is considered to have completed an academic year and progresses to the next annual loan limit when the academic year calendar period has elapsed.

(2) If a school measures academic progress in an educational program in credit hours and uses nonstandard terms that are not substantially equal in length or each term is not at least nine weeks of instructional time in length, or measures academic progress in credit hours and does not have academic terms, a student is considered to have completed an academic year and progresses to the next annual loan limit at the later of—

(i) The student's completion of the weeks of instructional time in the student's academic year; or

(ii) The date, as determined by the school, that the student has successfully completed the academic coursework in the student's academic year.

(3) If a school measures academic progress in an educational program in clock hours, a student is considered to have completed an academic year and progresses to the next annual loan limit at the later of—

(i) The student's completion of the weeks of instructional time in the student's academic year; or

(ii) The date, as determined by the school, that the student has successfully completed the clock hours in the student's academic year.

(4) For purposes of this section, terms in a loan period are substantially equal in length if no term in the loan period is more than two weeks of instructional

time longer than any other term in that loan period.

* * * * *

(g) *Treatment of excess loan proceeds.* Before the disbursement of any Direct Subsidized Loan, Direct Unsubsidized Loan, or Direct PLUS Loan proceeds, if a school learns that the borrower will receive or has received financial aid for the period of enrollment for which the loan was intended that exceeds the amount of assistance for which the student is eligible (except for Federal Work-Study Program funds up to $300), the school must reduce or eliminate the overaward by either—

(1) Using the student's Direct Unsubsidized Loan, Direct PLUS Loan, or State-sponsored or another non-Federal loan to cover the expected family contribution, if not already done; or

(2) Reducing one or more subsequent disbursements to eliminate the overaward.

* * * * *

(Authority: 20 U.S.C. 1087a *et seq.*)

■ 105. Section 685.304 is amended by:

■ A. Revising paragraph (a)(1).

■ B. In paragraph (a)(2), removing the words ''prior Direct PLUS Loan or Federal PLUS Loan'' and adding, in their place, the words ''prior student Direct PLUS Loan or student Federal PLUS Loan''.

■ C. In paragraph (a)(7)(i)(A), removing the word ''or'' the first time it appears and adding, in its place, the word ''of''.

■ D. Revising paragraph (a)(7)(iii).

■ E. Revising paragraph (a)(7)(iv).

■ F. Revising paragraph (b)(3).

■ G. In paragraph (b)(4)(ii), removing the words ''income contingent repayment plans'' and adding, in their place, the words ''income-contingent repayment''.

■ H. Adding a new paragraph (b)(8).

The revisions and addition read as follows:

§ 685.304 Counseling borrowers.

(a) * * *

(1) Except as provided in paragraph (a)(8) of this section, a school must ensure that entrance counseling is conducted with each Direct Subsidized Loan or Direct Unsubsidized Loan student borrower prior to making the first disbursement of the proceeds of a loan to a student borrower unless the student borrower has received a prior Direct Subsidized Loan, Direct Unsubsidized Loan, Subsidized or Unsubsidized Federal Stafford Loan, or Federal SLS Loan.

* * * * *

(7) * * *

(iii) For a graduate or professional student PLUS Loan borrower who has received a prior Direct Subsidized Loan, Direct Unsubsidized Loan, Subsidized Federal Stafford Loan, or Unsubsidized Federal Stafford Loan, provide the information specified in § 685.301(a)(3)(i)(A) through § 685.301(a)(3)(i)(C); and

(iv) For a graduate or professional student PLUS Loan borrower who has not received a prior Direct Subsidized Loan, Direct Unsubsidized Loan, Subsidized Federal Stafford Loan, or Unsubsidized Federal Stafford Loan, provide the information specified in paragraph (a)(6)(i) through paragraph (a)(6)(xii) of this section.

* * * * *

(b) * * *

(3) If a student borrower withdraws from school without the school's prior knowledge or fails to complete the exit counseling as required, exit counseling must be provided either through interactive electronic means, by mailing written counseling materials to the student borrower at the student borrower's last known address, or by sending written counseling materials to an email address provided by the student borrower within 30 days after the school learns that the student borrower has withdrawn from school or failed to complete the exit counseling as required.

* * * * *

(8)(i) For students who have received loans under both the FFEL Program and the Direct Loan Program for attendance at a school, the school's compliance with the exit counseling requirements in paragraph (b) of this section satisfies the exit counseling requirements in 34 CFR 682.604(a) if the school ensures that the exit counseling also provides the borrower with the information described in 34 CFR 682.604(a)(2)(i) and (ii).

(ii) A student's completion of electronic interactive exit counseling offered by the Secretary satisfies the requirements of paragraph (b) of this section and, for students who have also received FFEL Program loans for attendance at the school, 34 CFR 682.604(a).

* * * * *

§ 685.305 [Amended]

■ 106. Section 685.305 is amended by:

■ A. In paragraph (a), removing the word ''shall'' and adding, in its place, the word ''must''.

■ B. In paragraph (b), removing the word ''shall'' and adding, in its place, the word ''must''.

■ C. In paragraph (c), removing the word ''shall'' and adding, it its place, the word ''must''.

§ 685.306 [Amended]

■ 107. Section 685.306 is amended by:

■ A. In paragraph (a)(1), removing the word ''Shall'' and adding, in its place, the word ''Must''.

■ B. In paragraph (a)(2), removing the word ''Shall'' and adding, in its place, the word ''Must''.

■ C. In paragraph (b), removing the word ''shall'' and adding, in its place, the word ''must''.

§ 685.307 [Amended]

■ 108. Section 685.307(b) is amended by removing the word ''shall'' and adding, in its place, the word ''must''.

■ 109. Section 685.309 is amended by:

■ A. In the introductory text of paragraph (a), removing the word ''shall'' and adding, in its place, the word ''must''.

■ B. Revising paragraph (b).

■ C. In paragraph (c), removing the word ''shall'' and adding, in its place, the word ''must''.

■ D. In paragraph (d), removing the word ''shall'' and adding, in its place, the word ''must''.

■ E. In paragraph (e), removing the word ''shall'' and adding, in its place, the word ''must''.

■ F. In paragraph (f), removing the word ''shall'' and adding, in its place, the word ''must''.

■ G. In paragraph (g), removing the words ''Except for funds paid to a school under section 452(b)(1) of the Act, funds'' and adding, in their place, the word ''Funds''.

The revision reads as follows:

§ 685.309 Administrative and fiscal control and fund accounting requirements for schools participating in the Direct Loan Program.

* * * * *

(b) *Enrollment reporting process.* (1) Upon receipt of an enrollment report from the Secretary, a school must update all information included in the report and return the report to the Secretary—

(i) In the manner and format prescribed by the Secretary; and

(ii) Within the timeframe prescribed by the Secretary.

(2) Unless it expects to submit its next updated enrollment report to the Secretary within the next 60 days, a school must notify the Secretary within 30 days after the date the school discovers that—

(i) A loan under title IV of the Act was made to or on behalf of a student who was enrolled or accepted for enrollment at the school, and the student has ceased to be enrolled on at least a half-time basis or failed to enroll on at least a half-time basis for the period for which the loan was intended; or

(ii) A student who is enrolled at the school and who received a loan under title IV of the Act has changed his or her permanent address.

* * * * *

§ 685.400 [Removed and Reserved]

■ 110. Section 685.400 is removed and reserved.

§ 685.402 [Removed and Reserved]

■ 111. Section 685.402 is removed and reserved.

Appendix

Appendix A below summarizes proposed technical changes to the FFEL Program regulations in 34 CFR part 682, excluding minor technical or conforming changes. A document showing all proposed changes to 34 CFR part 682 that are included in this notice of proposed rulemaking (NPRM) may be found at *http://www2.ed.gov/policy/highered/reg/hearulemaking/2011/loans.html*.

Laws cited in Appendix A:

- Higher Education Act of 1965, as amended (HEA)
- SAFRA Act (included in the Health Care and Reconciliation Act of 2010 (HCERA)) (Pub. L. 111–152, enacted March 30, 2010)
- Higher Education Opportunity Act (HEOA) (Pub. L. 110–315, enacted August 14, 2008)

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

APPENDIX A—SUMMARY OF PROPOSED TECHNICAL CHANGES TO 34 CFR PART 682

Section	Proposed change	Reason
General	Revise nomenclature as necessary to ensure consistent use of same terms to refer to Direct Loan Program components in 34 CFR parts 682 and 685. Where applicable, remove or revise language to reflect the elimination of authority to make new FFEL Program loans effective July 1, 2010. Change regulatory citations and redesignate paragraphs to conform with revisions, additions, and deletions to the regulations. Replace all references to "credit bureau" with "consumer reporting agency". Correct spelling and grammatical errors.	To ensure accuracy and consistency.
§ 682.100 The Federal Family Education Loan programs.	Revise language to use past tense and to reflect the elimination of authority to make new FFEL Program loans effective July 1, 2010.	The SAFRA Act eliminated the authority to make new FFEL Program loans effective July 1, 2010.
§ 682.101 Participation in the FFEL programs.	Revise language to use past tense and to reflect the elimination of authority to make new FFEL Program loans effective July 1, 2010.	The SAFRA Act eliminated the authority to make new FFEL Program loans effective July 1, 2010.
§ 682.102 Obtaining and repaying a loan.	Retitle the section and remove paragraphs (a) through (d), which pertain to the application process to obtain a FFEL Program loan.	The SAFRA Act eliminated the authority to make new FFEL Program loans effective July 1, 2010.
§ 682.103 Applicability of subparts	In paragraph (c), remove reference to deleted subpart E governing Federal Insured Student Loan (FISL) Program.	No new FISL Program loans have been made since 1983 and very few of these loans are in repayment; therefore regulations governing the FISL Program are no longer needed. Additionally, the SAFRA Act eliminated the authority to make any new loans under Part B of the HEA effective July 1, 2010.
§ 682.200 Definitions	Remove reference to eliminated programs in § 682.200(a)(1) and elsewhere in the section and reorder remaining listed terms in paragraph (a)(1) In § 682.200(b), revise definitions of:. • "Lender" to include audit requirements for a trustee lender that operated on behalf of a school or school-affiliated organization to originate FFEL Program loans; • "Nationwide consumer reporting agency" • "Satisfactory repayment arrangements" to replace reference to § 682.401(b)(4) with the phrase "the title IV student assistance programs" and to remove current paragraph (2). (See discussion of other proposed non-technical changes to the definition of "satisfactory repayment arrangements" in the "Significant Proposed Regulations" section of the preamble to these regulations)	Changes to § 682.200(a)(1) to ensure accuracy. Conforming change to "Lender" due to elimination of § 682.601. Revision to "Nationwide consumer reporting agency" to ensure accuracy with statutory citation and distinguish a nationwide consumer reporting agency from a local or regional agency and from a nationwide specialty consumer reporting agency. Revisions to "Satisfactory Repayment Arrangements" to ensure accuracy and clarity and to reflect elimination of authority to make FFEL Consolidation loans effective July 1, 2010.
§ 682.201 Eligible borrowers	Minor technical changes	Clarity/consistency/accuracy.
§ 682.202 Permissible charges by lenders to borrowers.	Minor technical changes	Clarity/consistency/accuracy.
§ 682.203 Responsible parties	No changes	

APPENDIX A—SUMMARY OF PROPOSED TECHNICAL CHANGES TO 34 CFR PART 682—Continued

Section	Proposed change	Reason
§ 682.204 Maximum loan amounts	Remove language throughout the section that refers to loans first disbursed before July 1, 2008.	To remove historical references that are no longer needed.
	In paragraphs (a)(1)(iii), (c)(1)(iii), and (d)(1)(iii), replace the word ''program'' with the word ''enrolled'' in the fraction for prorating loan amounts for programs of study less than a full academic year in length.	To ensure consistent treatment of students enrolled in programs of less than a full academic year, whether students are new or transfer students, or are students admitted to a program with advanced standing.
	Remove paragraph (f), as it pertains to the annual loan limits in the SLS Program.	To remove regulations that are no longer needed; SLS program ended July 1, 1994.
§ 682.205 Disclosure requirements for lenders.	Remove regulations governing required lender disclosures to borrowers in § 682.205(a), (b), (g), and (i) that are provided when new loans are made.	The SAFRA Act eliminated the authority to make new FFEL Program loans effective July 1, 2010.
	See discussion of proposed non-technical changes to the regulations governing lender disclosures to FFEL borrowers under ''FFEL Lender Disclosures for Borrowers Who Are 60 Days Delinquent'' and ''FFEL Lender Repayment Disclosures to Borrowers Who Are Having Difficulty Making Payments'' in the ''Significant Proposed Regulations'' section of the preamble to these regulations.	
§ 682.206 Due diligence in making a loan.	Remove this section	To remove regulations governing FFEL loan origination that are no longer needed as a result of the SAFRA Act.
§ 682.207 Due diligence in disbursing a loan.	Remove this section	To remove regulations governing the disbursement of new FFEL loans that are no longer needed as a result of the SAFRA Act.
§ 682.208 Due diligence in servicing a loan.	Minor technical changes	Clarity/consistency/accuracy.
§ 682.209 Repayment of a loan	Add new § 682.209(a)(3)(i)(D) explaining date repayment begins for borrowers with 6.0, 5.6, and 6.8 percent fixed interest rate loans.	To ensure consistency with the HEA.
	Add exception to the repayment schedule requirements for consolidation loans in redesignated § 682.209(e)(4)(ii) for borrowers whose payment can be less than the amount of accruing interest under the income-based repayment plan.	To conform provision to the income-based repayment regulations.
	Remove § 682.209(e) and (f) governing refinancing of existing PLUS and SLS loans to secure a variable interest rate from the regulations.	To remove obsolete FFEL regulations.
	Remove § 682.209(j) governing FFEL Consolidation Loan lender certifications.	To remove provisions related to making new FFEL Consolidation Loans that are no longer needed as a result of the SAFRA Act.
§ 682.210 Deferment	Add reference in § 682.210(a)(4) to the ability of a representative to request a military deferment on behalf of a borrower.	To clarify the ability of a representative to act on a borrower's behalf when the borrower is not available to request a military deferment.
	Identify the applicable borrower cohort in introductory language to § 682.210(b)(1)–(6) and add cross-references to eligibility criteria in § 682.210 (c)–(r) for each deferment type available to these borrowers.	To clarify the regulations by identifying the deferment requirements and eligibility criteria applicable to the pre-July 1, 1993 cohort of borrowers.
§ 682.211 Forbearance	See the discussion of proposed non-technical changes in this section under ''Forbearance for Borrowers Who are 270 or More Days Delinquent Prior to Guaranty Agency Default Claim Payment or Transfer by the Department to Collection Status.'' ''Forbearance Provisions for Borrowers Receiving Department of Defense Student Loan Repayment Benefits,'' and ''Borrowers who are Delinquent When Forbearance is Granted'' in the ''Significant Proposed Regulations'' section of the preamble to these regulations.	
§ 682.212 Prohibited transactions	No changes.	
§ 682.213 Prohibition against the use of the Rule of the 78s.	No changes.	
§ 682.214 Compliance with equal credit opportunity requirements.	Remove this section	To remove regulations related to lender compliance with the Equal Credit Opportunity Act when making FFEL loans; these regulations are no longer needed as a result of the SAFRA Act.

APPENDIX A—SUMMARY OF PROPOSED TECHNICAL CHANGES TO 34 CFR PART 682—Continued

Section	Proposed change	Reason
§ 682.215 Income-based repayment plan.	See the changes to the regulations governing the Income-Based Repayment Plan for FFEL borrowers in the final regulations published on November 1, 2012 (77 FR 66088).	
§ 682.216 Teacher loan forgiveness program.	In paragraphs (a) and (c), rephrase to state that a borrower works ''for'' an educational service agency, not ''at'' an educational service agency.	To clarify that a teacher who is employed by an ESA may not always teach at an ESA facility.
	Redesignate last paragraph of § 682.216(c)(1)(iii) as paragraph (2) and renumber subsequent paragraphs.	To clarify that a borrower employed by the school operated by the Bureau of Indian Affairs is not subject to the requirements of § 682.216(1)(i)–(iii).
	Replace references to loan ''discharge'' throughout the section with ''loan forgiveness''.	To ensure consistency with the HEA and section title.
§ 682.300 Payment of interest benefits on Stafford and Consolidation loans.	Remove reference to deleted § 682.207 in paragraph (b)(2)(ii)(B) and remove paragraphs (c)(3) and (4) from the regulations.	To remove references to FFEL loan disbursement and interest subsidy payments to lenders on newly disbursed loans that are no longer needed as a result of the SAFRA Act.
§ 682.301 Eligibility of borrowers for interest benefits on Stafford and Consolidation loans.	Remove § 682.301(c) allowing use of unsubsidized Federal, State-sponsored, and private loans to cover expected family contribution when determining loan eligibility.	To remove provision related to new FFEL loan origination that is no longer needed as a result of the SAFRA Act.
§ 682.302 Payment of special allowance on FFEL loans.	Minor technical changes	Clarity/consistency/accuracy.
§ 682.303 [Reserved]	N/A.	
§ 682.304 Methods for computing interest benefits and special allowance.	No changes.	
§ 682.305 Procedures for payment of interest benefits and special allowance and collection of origination and loan fees.	Revise § 682.305(c) by deleting the phrase ''originating or'' in (c)(1)(i) and removing (c)(1)(ii), (vi), and (vii) from the regulations.	To remove reference to FFEL loan originations when determining applicability of lender audit requirement to non-school lenders and to remove school lender audit requirement from the regulations. School lender audit requirements are no longer needed as the authority for new school lenders and new FFEL loans no longer exists. Audit requirements pertaining to lender trustees for schools or school-affiliated organizations were moved under the definition of ''Lender'' in § 682.200(b).
§ 682.400 Agreements between a guaranty agency and the Secretary.	Revise § 682.400(b)(1)(i) by replacing the word ''and'' with ''or'' and by removing the phrase ''that consolidate only subsidized loans'' from the paragraph.	To ensure consistency with the HEA; Consolidation Loan borrowers are eligible for interest subsidy during certain periods on the portion of the Consolidation loan that repaid subsidized FFEL or Direct loans.
§ 682.401 Basic program agreement.	In § 682.401, remove from the regulations ..... • § 682.401(b)(1)–(2), which pertain to annual and aggregate loan limits;. • § 682.401(b)(3), which specifies the duration of a borrower's eligibility for loans. • § 682.401(b)(5), which describes borrower responsibilities in the loan origination process. • § 682.401(b)(6), which details school eligibility requirements to participate in a guaranty agency's program, limits on that participation, and an agency's authority to limit, suspend and terminate a school's participation. • §§ 682.401(b)(8) and (b)(9), which outline when a guaranty agency must guarantee loans for students attending out-of-state schools and for out-of-state residents. • § 682.401(b)(12) and (b)(13), which authorize an administrative fee for consolidation and refinanced PLUS and SLS loans. • § 682.401(c), which requires guaranty agencies to provide lender-of-last resort loan origination services. • § 682.401(d)(4), which details requirements for use of the master promissory note(MPN); and.	To remove provisions no longer needed as a result of the SAFRA Act.

APPENDIX A—SUMMARY OF PROPOSED TECHNICAL CHANGES TO 34 CFR PART 682—Continued

Section	Proposed change	Reason
	• § 682.401(e), which details guaranty agency prohibited activities to secure loan guarantees and other permissible activities..	
	In redesignated § 682.401(b)(3)(i), replace reference to deleted § 682.209 (e) and (f) with program name references; in paragraph (b)(3)(vi)(B)(4), remove reference to deleted § 682.207; and in paragraph (b)(6), insert reference to subpart N of 34 CFR part 668.	To ensure accuracy; required conforming changes.
	In redesignated § 682.401(b)(18), delete paragraph (b)(18)(ii), which references pre-October 1, 2006 loan consolidations.	Delete obsolete regulations.
§ 682.402 Death, disability, closed school, false certification, unpaid refund, and bankruptcy payments.	For § 682.402(c), see the final regulations published on November 1, 2012 (77 FR 66088) for significant changes to regulations governing discharge based on total and permanent disability.	
	For § 682.402(d), see the discussion of proposed non-technical changes to regulations governing discharge based on school closure under ''Closed School Discharge'' in the ''Significant Proposed Regulations'' section of the preamble to these regulations.	
	In § 682.402(l)(1), (l)(2)(ii), (l)(3)(i), and (n)(2), revise language to include reference to ''Federal default fees'' to fees included in an unpaid refund discharge.	To ensure accuracy.
§ 682.403 Federal advances for claim payments.	Remove this section	To remove obsolete provisions related to Federal advances made to a State or guaranty agency.
§ 682.404 Federal reinsurance agreement.	Minor technical changes	Clarity/consistency/accuracy.
§ 682.405 Loan rehabilitation agreement.	For proposed non-technical changes in § 682.405, see the discussions under ''Loan Rehabilitation Agreement: Reasonable and Affordable Payment Standard'' and ''Loan Rehabilitation Agreement: Treatment of Borrowers Subject to Administrative Wage Garnishment'' in the ''Significant Proposed Regulations'' section of the preamble to these regulations.	
§ 682.406 Conditions for claim payments from the Federal Fund and for reinsurance coverage.	In § 682.406(a)(2)(ii), remove reference to deleted § 682.207.	To ensure accuracy.
§ 682.407 Discharge of student loan indebtedness for survivors of victims of the September 11, 2001, attacks.	Minor technical change.	
§ 682.408 Loan disbursement through an escrow agent.	Remove this section	To remove regulations governing FFEL loan disbursement through an escrow agent that are no longer needed as a result of the SAFRA Act.
§ 682.409 Mandatory assignment by guaranty agencies of defaulted loans to the Secretary.	Minor technical change	Clarity/consistency/accuracy.
§ 682.410 Fiscal, administrative, and enforcement requirements.	In § 682.410(a)(2), remove reference to deleted § 682.418 and in paragraph (b)(7), replace reference to deleted § 682.509(a)(1) with reference to § 682.404(b)(3)(ii).	To ensure accuracy; required conforming changes.
	In § 682.410(a)(2)(ii), replace the word ''preclaims'' with ''default aversion''.	To accurately reflect the HEA.
	For § 682.410(b)(9), see the discussion of proposed non-technical changes under ''Administrative Wage Garnishment (AWG) of the Disposable Pay of Defaulted FFEL Program Borrowers'' in the ''Significant Proposed Regulations'' section of the preamble to these regulations.	
	In § 682.410(c)(1)(i)(C), revise to limit scope of guaranty agency reviews of schools.	To limit required guaranty agency reviews of schools that formerly participated in the FFEL Program to those schools with two-year cohort rates that include FFEL loans.
	In § 682.410(c), remove (c)(4), and in redesignated paragraphs (c)(8) and (c)(10), make necessary conforming changes.	To remove provision no longer needed due to the SAFRA Act and make required conforming changes.

APPENDIX A—SUMMARY OF PROPOSED TECHNICAL CHANGES TO 34 CFR PART 682—Continued

Section	Proposed change	Reason
§ 682.411 Lender due diligence in collecting guaranty agency loans.	Minor technical changes	Clarity/consistency/accuracy.
§ 82.412 Consequences of the failure of a borrower or student to establish eligibility.	Minor technical change	Clarity/consistency/accuracy.
§ 682.413 Remedial actions	Minor technical changes	Clarity/consistency/accuracy.
§ 682.414 Records, reports, and inspection requirements for guaranty agency programs.	Remove reference to ''schools'' in § 682.414(b)(2) and (b)(3) governing required guaranty agency reporting.	To reflect a change to the HEA made by the HEOA.
§ 682.415 [Reserved]	N/A.	
§ 682.416 Requirements for third-party servicers and lenders contracting with third-party servicers.	No changes.	
§ 682.417 Determination of Federal funds or assets to be returned.	No changes.	
§ 682.418 Prohibited uses of the assets of the Operating Fund during periods in which the Operating fund contains transferred funds owed to the Federal Fund.	Remove this section	To remove an obsolete section of the regulations governing the uses of a guaranty agency's Operating Fund when it contains funds transferred from the agency's Federal Fund.
§ 682.419 Guaranty agency Federal Fund.	Minor technical changes	Clarity/consistency/accuracy.
§ 682.420 Federal nonliquid assets	Remove this section	To remove an obsolete section of the regulations that govern a guaranty agency's use of Federal non-liquid assets.
§ 682.421 Funds transferred from the Federal Fund to the Operating Fund by a guaranty agency.	Remove this section	To remove an obsolete section of the regulations that govern the transfer of funds from a guaranty agency's Federal Fund to its Operating Fund.
§ 682.422 Guaranty agency repayment of funds transferred from the Federal Fund.	Remove this section	To remove an obsolete section of the regulations that govern a guaranty agency's repayment of funds transferred from its Federal Fund to its Operating Fund.
§ 682.423 Guaranty agency Operating Fund.	Minor technical changes	Clarity/consistency/accuracy.
Subpart E—Federal Guaranteed Student Loan Programs.	Remove and reserve this subpart	To remove obsolete subpart that governs the Federal Insured Student Loan Program (FISL) under which no loans have been made since 1983.
§§ 682.500 to 682.515.		
§ 682.600 [Reserved]	N/A.	
§ 682.601 Rules for a school that makes or originates loans.	Remove this section	To remove regulations governing schools that make or originate FFEL Program loans. No new FFEL school lenders were authorized after February 7, 2006, and no new FFEL loans are authorized to be made by any lender as a result of the SAFRA Act, effective July 1, 2010.
§ 682.602 Rules for a school or school-affiliated organization that makes or originates loans through an eligible lender trustee.	Remove this section	To remove regulations governing schools and school-affiliated organizations that originate or hold FFEL Program loans as a lender through an eligible lender trustee. No new trustee arrangements for this purpose are authorized after September 30, 2006, and no new FFEL loans are authorized to be made by any lender as a result of SAFRA Act, effective July 1, 2010.
§ 682.603 Certification by a participating school in connection with a loan application.	In § 682.603(h), remove provisions in paragraph (h)(1) that duplicate § 682.603(f)(1)(i) and redesignate current § 682.603(h)(2) as § 682.603(g).	To correct technical error in the regulatory section.
	Replace cross-references to deleted § 682.604 provisions in § 682.603((b)(3) and redesignated § 682.603(j)(1) and (2) with applicable statutory citations.	To ensure accuracy; required conforming changes.
§ 682.604 Processing the borrower's loan proceeds and counseling borrowers.	Remove § 682.604 (a); remove and reserve paragraph (b); remove-paragraphs (c)–(f) and (h); and redesignate paragraph (g) as paragraph (a).	To remove provisions governing school delivery of loan disbursements and entrance counseling with new borrowers that are no longer needed as a result of the SAFRA Act and to make required conforming changes.
	Revise redesignated § 682.604(a) governing ''exit counseling'' by: • Adding another method for providing exit counseling materials to students who withdraw or fail to complete exit counseling;	To incorporate Department's earlier policy guidance and make necessary conforming changes.

APPENDIX A—SUMMARY OF PROPOSED TECHNICAL CHANGES TO 34 CFR PART 682—Continued

Section	Proposed change	Reason
	• Replacing cross-references to deleted provisions in paragraph (a)(2)(vi) with the content of those cross-references; and • Adding new paragraph (a)(5) to reflect earlier guidance on school compliance with the exit counseling requirements.	
§ 682.605 Determining the date of a student's withdrawal.	Minor technical changes	Clarity/consistency/accuracy.
§ 682.606 [Reserved]	N/A.	
§ 682.607 Payment of a refund or a return of title IV, HEA program funds to a lender upon a student's withdrawal.	No changes.	
§ 682.608 Termination of a school's lending eligibility.	Remove this section	To remove section governing termination of a school lender that is no longer needed in the regulations.
§ 682.609 Remedial actions	No changes.	
§ 682.610 Administrative and fiscal requirements for participating schools.	For § 682.610(c), see the discussion of proposed non-technical changes to regulations governing student enrollment reporting under ''School Enrollment Status Reporting Requirements'' in the ''Significant Proposed Regulations'' section of the preamble to these regulations.	
	Other minor technical changes	Clarity/consistency/accuracy.
§ 682.611 [Reserved]	N/A.	
Subpart G—Limitation, suspension, or Termination of Lender or third-party Servicer Eligibility and Disqualification of Lenders and Schools.	Revise title to subpart by deleting reference to schools.	Required conforming change; termination of schools from loan programs became purview of Department effective July 1, 2010.
§ 682.700 Purpose and scope	Minor technical changes	Clarity/consistency/accuracy.
§ 682.701 Definitions of terms used in this subpart.	Minor technical change	Clarity/consistency/accuracy.
§ 682.702 Effect on participation	In paragraph (b), remove reference to the number or total amount of new loans in lender limitation actions.	As a result of the SAFRA Act, limitation, suspension, and termination actions against lenders no longer involve loss of ability to make new FFEL loans or loan guarantees , or to receive benefits on those loans, since no new FFEL Program loans are being made.
	Remove paragraph (d) referencing new loan guarantees and payment of lender benefits on new loans; make related conforming change in § 682.702(a).	
§ 682.703 Informal compliance procedures.	No changes.	
§ 682.704 Emergency action	In paragraph (a), remove reference to new loan guarantee commitments.	As a result of the SAFRA Act, emergency actions against lenders no longer involve loss of guarantee commitments.
§ 682.705 Suspension proceedings	Remove § 682.705(c) on the application of a ''rebuttable presumption'' in lender suspension proceedings based on prohibitions in section 435(d)(5) of the HEA.	Use of ''rebuttable presumption'' in lender suspension actions applies only to existing loans and lender activities prior to July 1, 2010. Moved to § 682.709(d).
	Make other minor technical changes	Clarity/consistency/accuracy.
§ 682.706 Limitation or termination proceedings.	Remove § 682.706(d) that governs the application of a ''rebuttable assumption'' in lender limitation and termination proceedings based on prohibitions in section 435(d)(5).	Use of ''rebuttable presumption'' in lender limitation and termination proceedings applies only to existing loans and lender activities prior to July 1, 2010.
§ 682.707 Appeals in a limitation or termination proceeding.	No changes.	
§ 682.708 Evidence of mailing and receipt dates.	No changes.	
§ 682.709 Reimbursements, refunds, and offsets.	Add ''rebuttable presumption'' provision that is being removed from §§ 682.705 and 682.706 to § 682.709 as new paragraph(d).	Use of ''rebuttable presumption'' in lender sanctions applies only to existing loans and lender activities prior to July 1, 2010.
§ 682.710 Removal of limitation	No changes.	
§ 682.711 Reinstatement after termination.	Remove § 682.711(c) governing school lender termination and reinstatement.	To remove provision governing school lenders that is no longer needed.
§ 682.712 Disqualification review of limitation, suspension, and termination actions taken by guarantee agencies against lenders.	Remove § 682.712(i) referencing FISL program standards that have been removed from the regulations.	To ensure accuracy; required confirming change.

APPENDIX A—SUMMARY OF PROPOSED TECHNICAL CHANGES TO 34 CFR PART 682—Continued

Section	Proposed change	Reason
§ 682.713 Disqualification review of limitation, suspension, and termination actions taken by guarantee agencies against a school.	Remove this section	To remove section governing Department review of guaranty agency sanctions against schools that is no longer needed, as Department will undertake all such actions.
Subpart H—Special Allowance Payments on Loans Made or Purchased With Proceeds of Tax-Exempt Obligations.	Remove § 682.800 and reserve subpart H of part 682.	To remove a section prohibiting discrimination when making new loans with tax-exempt funds that, as a result of SAFRA, is no longer needed in the regulations.
§ 682.800 Prohibition against discrimination as a condition for receiving special allowance payments.		
Appendix C to Part 682	Remove and reserve this appendix	To remove the appendix containing provisions for curing lender due diligence violations in the FISL program.
Appendix D to Part 682	Minor technical change	To ensure accuracy and consistency.

Appendix B below summarizes proposed technical changes to the Direct Loan Program regulations in 34 CFR part 685, excluding minor technical or conforming changes. A document showing all proposed changes to 34 CFR part 685 that are included in this NPRM may be found at *http://www2.ed.gov/policy/highered/reg/hearulemaking/2011/loans.html*.

Laws cited in Appendix B:

- Higher Education Act of 1965, as amended (HEA)
- Consolidated Appropriations Act, 2012 (Pub. L. 112–74, enacted December 23, 2011)
- Budget Control Act of 2011 (BCA) (Pub. L. 112–25, enacted August 2, 2011)
- SAFRA Act (included in the Health Care and Reconciliation Act of 2010) (Pub. L. 111–152, enacted March 30, 2010)
- Higher Education Opportunity Act (HEOA) (Pub. L. 110–315, enacted August 14, 2008)

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

APPENDIX B—SUMMARY OF PROPOSED TECHNICAL CHANGES TO 34 CFR PART 685

Section	Proposed change	Reason
General	Revise nomenclature as necessary to ensure that the same terms are used to refer to Direct Loan Program components and Direct Loan types throughout 34 CFR part 685.	Greater clarity and consistency.
	Where applicable, remove language that is no longer needed due to the elimination of the authority for new FFEL Program loans after July 1, 2010.	To reflect changes to the HEA made by the SAFRA Act.
	Where applicable, remove or revise language that does not reflect current procedures used in the Direct Loan Program.	To ensure that the Direct Loan Program regulations accurately reflect current processes.
	Replace all references to "credit bureau" with "consumer reporting agency"	To reflect a change to the HEA made by the HEOA.
§ 685.100 The William D. Ford Federal Direct Loan Program.	Revise § 685.100(a)(1) to specify that • Graduate and professional students are not eligible to receive Direct Subsidized Loans effective for loan periods beginning on or after July 1, 2012; and.	To reflect a change to the HEA made by the BCA.
	• The Secretary does not subsidize the interest that accrues during the grace period on Direct Subsidized Loans for which the first disbursement is made on or after July 1, 2012 and before July 1, 2014.	To reflect a change to the HEA made by the Consolidated Appropriations Act, 2012.
§ 685.101 Participation in the Direct Loan Program.	Revise § 685.101(b) to specify that graduate and professional students are not eligible to receive Direct Subsidized Loans effective for loan periods beginning on or after July 1, 2012.	To reflect a change to the HEA made by the BCA.
§ 685.102 Definitions	See the discussion of proposed technical changes to the definitions in § 685.102 under "Modification of Direct Loan Program Regulations: Definitions" in the "Significant Proposed Regulations" section of the preamble to these proposed regulations.	

APPENDIX B—SUMMARY OF PROPOSED TECHNICAL CHANGES TO 34 CFR PART 685—Continued

Section	Proposed change	Reason
	See the discussion of proposed non-technical changes to the definition of ''satisfactory repayment arrangement'' in § 685.102(b) under ''Satisfactory Repayment Arrangements'' in the ''Significant Proposed Regulations'' section of the preamble to these proposed regulations.	
§ 685.103 Applicability of subparts	No changes.	
§ 685.200 Borrower eligibility	In § 685.200(a)(1)(iv) introductory text, replace ''cancelled'' with ''discharged''.	Technical correction for consistency with terminology used in § 685.212 and § 685.213.
	Add language to § 685.200(a)(1)(iv)(B)(*2*) stating that a borrower who receives a new loan after a prior total and permanent disability (TPD) discharge must acknowledge that neither the new loan nor any previously discharged loan that is reinstated may be discharged in the future based on an impairment that exists at the time the new loan is made, unless the impairment substantially deteriorates.	Technical correction; this provision was inadvertently omitted from final regulations published by the Department on October 29, 2009 (74 FR 55972) and is consistent with the provision in current § 685.200(a)(1)(iv)(B)(*3*) that applies to borrowers who receive new loans within three years of being granted a conditional TPD discharge under the regulations that were in effect for TPD discharge applications received prior to July 1, 2010.
	Revise § 685.200(a)(1)(v) to provide that this paragraph applies only to students who were enrolled in a program of study prior to July 1, 2012.	To reflect a change to the HEA made by the Consolidated Appropriations Act, 2012.
	In § 685.200(c)(1)(vi), add new paragraph D describing examples of extenuating circumstances that the Secretary may consider in determining that a borrower may receive a Direct PLUS Loan despite having an adverse credit history.	For consistency with the FFEL provision in § 682.201(c)(2)(v).
§ 685.201 Obtaining a loan	In § 685.201(a) and (b), remove or revise language as necessary. In § 685.201(b)(1), add language stating that the dependent student on whose behalf a parent obtains a Direct PLUS Loan must complete and submit a Free Application for Federal Student Aid (FAFSA).	To remove obsolete language and, where applicable, replace with updated language that reflects current procedures in the Direct Loan Program. In paragraph (b)(1), add language to reflect guidance provided in the Department's Dear Colleague Letter GEN–11–07.
§ 685.202 Charges for which borrowers are responsible.	In § 685.202(b)(2), add language stating that for a Direct Subsidized Loan for which the first disbursement is made on or after July 1, 2012 and before July 1, 2014, interest that accrues during the grace period may be capitalized when the loan enters repayment.	To reflect a change made by the Consolidated Appropriations Act, 2012, that eliminates the grace period interest subsidy for Direct Subsidized Loans with a first disbursement date on or after July 1, 2012 and before July 1, 2014.
§ 685.203 Loan limits	Throughout the section, remove references to loan limits that were in effect prior to more recent statutory changes.	To simplify the loan limit regulations by removing outdated language.
	In § 685.203(a)(5) and (b)(2), revise language to reflect the elimination of subsidized loan eligibility for graduate and professional students for loan periods beginning on or after July 1, 2012.	To reflect a change made by the BCA.
§ 685.204 Deferment	See the discussion of proposed technical changes in this section under ''Modification of Direct Loan Program Regulations: Deferment'' in the ''Significant Proposed Regulations'' section of the preamble to these proposed regulations.	
§ 685.205 Forbearance	Add new § 685.205(a)(5)(iii) describing the conditions under which a borrower may receive forbearance while performing qualifying teaching service for loan forgiveness under § 685.217.	To reflect the Department's longstanding policy in the Direct Loan Program and for consistency with the corresponding FFEL Program regulations in § 682.216(e).
	See the discussion of proposed non-technical changes in this section under ''Forbearance for Borrowers Who are 270 or More Days Delinquent Prior to Guaranty Agency Default Claim Payment or Transfer by the Department to Collection Status,'' ''Forbearance Provisions for Borrowers Receiving Department of Defense Student Loan Repayment Benefits,'' and ''Borrowers Who are Delinquent when Authorized Forbearance is Granted'' in the ''Significant Proposed Regulations'' section of the preamble to these proposed regulations.	
§ 685.206 Borrower responsibilities and defenses.	Minor technical changes	Clarity/consistency/accuracy.

APPENDIX B—SUMMARY OF PROPOSED TECHNICAL CHANGES TO 34 CFR PART 685—Continued

Section	Proposed change	Reason
§ 685.207 Obligation to repay	Add new § 685.207(a)(3) stating that a borrower's first payment is due within 60 days of a loan entering repayment.	To reflect the Department's longstanding policy in regulations.
	In § 685.207(b)(3), add language to reflect the temporary elimination of the grace period interest subsidy for Direct Subsidized Loans.	To reflect a change made by the Consolidated Appropriations Act, 2012.
§ 685.208 Repayment plans	See the final regulations published on November 1, 2012 (77 FR 66088) for technical changes in § 685.208.	
§ 685.209 Income-Contingent Repayment Plan.	See the final regulations published on November 1, 2012 (77 FR 66088) for significant regulatory changes in § 685.209.	
§ 685.210 Choice of repayment plan.	In § 685.210(a)(2), add a cross-reference to the standard repayment plan for Direct Consolidation Loan borrowers entering repayment on/after July 1, 2006.	To clarify that a Direct Consolidation Loan borrower who does not select a repayment plan will be placed on the standard repayment plan for Direct Consolidation Loan borrowers described in § 685.208(c) rather than the standard repayment plan with a maximum 10-year repayment period described in § 685.208(b).
	See the final regulations published on November 1, 2012 (77 FR 66088) for additional technical changes in § 685.210(b)(2)(ii).	
§ 685.211 Miscellaneous repayment provisions.	Minor technical changes in § 685.211(a) and (d) (including technical changes in § 685.211(a)(1) included in the final regulations published on November 1, 2012 (77 FR 66088).	Clarity/consistency/accuracy.
	For proposed non-technical changes in § 685.211(f), see the discussions under "Loan Rehabilitation Agreement: Reasonable and Affordable Payment Standard" and "Loan Rehabilitation Agreement: Treatment of Borrowers Subject to Administrative Wage Garnishment" in the "Significant Proposed Regulations" section of the preamble to these proposed regulations.	
§ 685.212 Discharge of a loan obligation.	Minor technical changes (including technical changes included in the final regulations published on November 1, 2012 (77 FR 66088).	Clarity/consistency/accuracy.
§ 685.213 Total and permanent disability discharge.	See the final regulations published on November 1, 2012 (77 FR 66088) for significant regulatory changes in § 685.213.	
§ 685.214 Closed school discharge	Revise § 685.214(a)(2)(ii) to clarify that the definition of "school" applies regardless of whether the school or its location or branch is considered eligible.	For consistency with the corresponding FFEL Program regulation in § 682.402(d)(1)(ii)(C).
	Revise § 685.214(b)(4) to state that the Secretary reports a discharge to consumer reporting agencies "so as to delete all adverse credit history assigned to the loan".	For consistency with the corresponding FFEL Program regulation in § 682.402(d)(2)(iv).
	Add new § 685.214(c)(4) describing the conditions under which the Secretary may grant a discharge without an application from the borrower.	For consistency with §§ 685.215(c)(7), 685.216(c)(2), and 682.402(d)(8).
	See the discussion of proposed non-technical changes in § 685.214(c)(1)(ii) under "Closed School Discharge" in the "Significant Proposed Regulations" section of the preamble to these proposed regulations.	
§ 685.215 Discharge for false certification of student eligibility or unauthorized payment.	In § 685.215(a)(1)(iv), remove the cross-reference to the definition of "identity theft" in the FFEL regulations;.	To eliminate the need to refer to the FFEL Program regulations for the definition of "identity theft."
	In § 685.215(c)(4), add the definition of "identity theft" from § 682.402(e)(2)(iv) of the FFEL Program regulations.	To eliminate the need to refer to the FFEL Program regulations for the definition of "identity theft."
	Revise § 685.215(a)(5) to state that the Secretary reports a discharge to consumer reporting agencies "so as to delete all adverse credit history assigned to the loan".	For consistency with the corresponding FFEL Program regulation in § 682.402(e)(2)(iv).
§ 685.216 Unpaid refund discharge	Minor technical changes	Clarity/consistency/accuracy.
§ 685.217 Teacher loan forgiveness program.	Throughout section, replace references to employment "at" or teaching "at" an education service agency (ESA) to employment "by" or teaching "for" an ESA.	To clarify that a teacher who is employed by an ESA may not necessarily teach at the ESA itself.

APPENDIX B—SUMMARY OF PROPOSED TECHNICAL CHANGES TO 34 CFR PART 685—Continued

Section	Proposed change	Reason
	Revise § 685.217(c)(1)(iii) by making the last sentence a new paragraph.	To clarify that Bureau of Indian Education schools are not subject to the requirements in § 685.217(c)(1)(i)—(iii).
	Add new § 685.217(c)(13) stating that borrowers performing qualifying teaching service may request forbearance in accordance with § 685.205(a)(5).	To reflect longstanding policy in the Direct Loan Program and for consistency with the corresponding FFEL Program regulations in § 682.216(e).
§ 685.218 Discharge of student loan indebtedness for survivors of victims of the September 11, 2001, attacks.	Minor technical changes	Clarity/consistency/accuracy.
§ 685.219 Public Service Loan Forgiveness.	No changes.	
§ 685.220 Consolidation	See the discussion of proposed technical changes under ''Modification of Direct Loan Program Regulations: Consolidation'' in the ''Significant Proposed Regulations'' section of the preamble to these proposed regulations.	
§ 685.221 Income-based repayment plan.	See the final regulations published on November 1, 2012 (77 FR 66088) for significant regulatory changes in § 685.221.	
§ 685.300 Agreements between an eligible school and the Secretary for participation in the Direct Loan Program.	In § 685.300(a), add new paragraph (5) stating that schools must, on a monthly basis, reconcile institutional records with Direct Loan funds received from the Secretary and Direct Loan disbursement records submitted to and accepted by the Secretary.	To reflect in the regulations an existing requirement for schools participating in the Direct Loan Program.
	Remove § 685.300(b)(8), which prohibits borrowers from receiving the same type of loan under both the Direct Loan Program and the FFEL Program for the same period of enrollment at the same school.	To eliminate a provision that is no longer needed due to the change made by the SAFRA Act providing that no new loans may be made under the FFEL Program effective July 1, 2010.
§ 685.301 Origination of a loan by a Direct Loan Program school.	Move current § 685.301(b), which contains provisions for determining disbursement dates and amounts, to § 685.303 as new paragraph § 685.303(d).	These provisions are more appropriately included in § 685.303, which covers processing loan proceeds.
	Move current § 685.301(c), which contains provisions for governing annual loan limit progression based on completion of an academic year, to § 685.303 as new paragraph § 685.303(e).	These provisions are more appropriately included in § 685.303, which covers processing loan proceeds.
	Revise § 685.301(a)(10)	To fix a technical error resulting from incorrect amendatory language in final regulations published by the Department on November 1, 2007 (72 FR 62011 and 72 FR 62032).
	In redesignated § 685.301(c), remove paragraph (2) and redesignate paragraph (c)(1) as (c).	To correct a technical error in the final regulations published by the Department on October 29, 2010 (75 FR 66832). The intent of the regulations was to replace the original paragraphs § 685.301(c)(1) and (2) with the text in paragraph (1), but paragraph (2) was inadvertently retained.
	See the discussion of a proposed non-technical change in § 685.301(a)(10)(ii) under ''Minimum loan period for transfer students in non-term and certain non-standard term programs'' in the ''Significant Proposed Regulations'' section of the preamble to these proposed regulations.	
§ 685.302 [Reserved]	N/A.	
§ 685.303 Processing loan proceeds.	Add new § 685.303(d) and 685.303(e) that contain the provisions currently in § 685.301(b) and 685.301(c).	Refer to the proposed changes for § 685.301.
§ 685.304 Counseling borrowers	See the discussion of technical changes under ''Modification of Direct Loan Program Regulations: Counseling Borrowers'' in the ''Significant Proposed Regulations'' section of the preamble to these proposed regulations.	
§ 685.305 Determining the date of a student's withdrawal.	Minor technical changes	Clarity/consistency/accuracy.
§ 685.306 Payment of a refund or return of title IV, HEA program funds to the Secretary.	Minor technical changes	Clarity/consistency/accuracy.

APPENDIX B—SUMMARY OF PROPOSED TECHNICAL CHANGES TO 34 CFR PART 685—Continued

Section	Proposed change	Reason
§ 685.307 Withdrawal procedure for schools participating in the Direct Loan Program.	Minor technical changes only	Clarity/consistency/accuracy.
§ 685.308 Remedial actions	No changes.	
§ 685.309 Administrative and fiscal control and fund accounting requirements for schools participating in the Direct Loan Program.	In § 685.309(g), remove the words ''Except for funds paid to a school under section 452(b)(1) of the Act''. See the discussion of proposed non-technical changes in § 685.309(b) under ''School Enrollment Status Reporting Requirements'' in the ''Significant Proposed Regulations'' section of the preamble to these proposed regulations.	Remove an obsolete reference to a statutory provision related to payment of administrative fees to Direct Loan schools that was removed from the HEA many years ago.
§ 685.400 School participation requirements.	Remove this section	To remove obsolete provisions that no longer apply to the Direct Loan Program.
§ 685.401 [Reserved]	N/A.	
§ 685.402 Criteria for schools to originate loans.	Remove this section	With the exception of the provisions in § 685.402(f), the provisions in this section are obsolete. The provisions in § 685.402(f) related to the use of the Master Promissory Note (MPN) would be updated to reflect current policy and incorporated in the definition of MPN in § 685.102(b).

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Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 1

Foreign Supplier Verification Programs for Importers of Food for Humans and Animals; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. FDA–2011–N–0143]

RIN 0910–AG64

Foreign Supplier Verification Programs for Importers of Food for Humans and Animals

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to adopt regulations on foreign supplier verification programs (FSVPs) for importers of food for humans and animals. The proposed regulations would require importers to help ensure that food imported into the United States is produced in compliance with processes and procedures, including reasonably appropriate risk-based preventive controls, that provide the same level of public health protection as those required under the hazard analysis and risk-based preventive controls and standards for produce safety sections of the Federal Food, Drug, and Cosmetic Act (the FD&C Act), is not adulterated, and is not misbranded with respect to food allergen labeling. We are proposing these regulations in accordance with the FDA Food Safety Modernization Act (FSMA). The proposed regulations would help ensure that imported food is produced in a manner consistent with U.S. standards.

DATES: Submit either electronic or written comments on the proposed rule by November 26, 2013.

ADDRESSES: You may submit comments on this proposed rule, identified by Docket No. FDA–2011–N–0143 and/or Regulatory Information Number (RIN) 0910–AG64, by any of the following methods, except that comments on information collection issues under the Paperwork Reduction Act of 1995 must be submitted to the Office of Regulatory Affairs, Office of Management and Budget (OMB) (see the ''Paperwork Reduction Act of 1995'' section of this document).

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following ways:

- *FAX:* 301–827–6870.
- *Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name, Docket No. FDA–2011–N–0143, and RIN 0910–AG64 for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

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

FOR FURTHER INFORMATION CONTACT:
Brian Pendleton, Office of Policy, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–4614; or
Domenic Veneziano, Office of Enforcement and Import Operations (ELEM–3108), Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857, 301–796–6673.

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Executive Summary

Purpose of the Proposed Rule

The proposed rule would adopt regulations on FSVPs that importers must create and follow to help ensure the safety of imported food. The proposed regulations vary based on the type of food product (such as processed foods, produce, and dietary supplements) and category of importer.

Congress required importers to perform risk-based foreign supplier verification activities and directed FDA to promulgate regulations on the content of FSVPs in section 301 of FSMA, codified in section 805 of the FD&C Act. The proposed regulations would require importers to implement FSVPs that provide adequate assurances that the importer's foreign suppliers produce food in compliance with processes and procedures, including risk-based preventive controls, that provide the same level of public health protection as those required under section 418 (concerning hazard analysis and preventive controls) or 419 (concerning produce safety) of the FD&C Act, as appropriate, and in compliance with sections 402 (concerning adulteration) and 403(w) (concerning misbranding regarding allergen labeling) of the FD&C Act.

Summary of Major Provisions

We are proposing a flexible, risk-based approach to foreign supplier verification. The regulations focus on foreseeable food safety risks identified through a hazard assessment process, rather than all risks covered by the adulteration provisions in section 402 of the FD&C Act. Because the principle of

hazard assessment is well accepted and understood throughout the international food safety community (e.g., as a key component of hazard analysis and critical control point (HACCP) and preventive controls programs), we believe that it provides the most effective way to implement a risk-based framework in which importers can evaluate potential products and suppliers and conduct appropriate verification efforts.

The proposed FSVP regulations also align with key components of the preventive controls programs that food manufacturers and processors should follow to ensure food safety, as discussed in FDA's recently issued proposed rule on current good manufacturing practice (CGMP) and hazard analysis and risk-based preventive controls for human food. The general FSVP framework, together with the modified provisions discussed in the next section, are intended to be sufficiently general and flexible to apply to a variety of circumstances without being unduly burdensome or restrictive of trade.

Although the FSVP requirements would apply to most imported food under FDA's regulatory jurisdiction, certain categories of imported food would not be covered under the FSVP regulations, as shown in Diagram 1 below. (The diagrams set forth below are intended to illustrate the FSVP requirements and do not include all aspects of the proposed regulations.) These exemptions include certain juice, fish, and fishery products (which are already subject to verification under FDA's HACCP regulations), food for personal consumption, alcoholic beverages, food that is transshipped, food that is imported for re-export, and food for research or evaluation.

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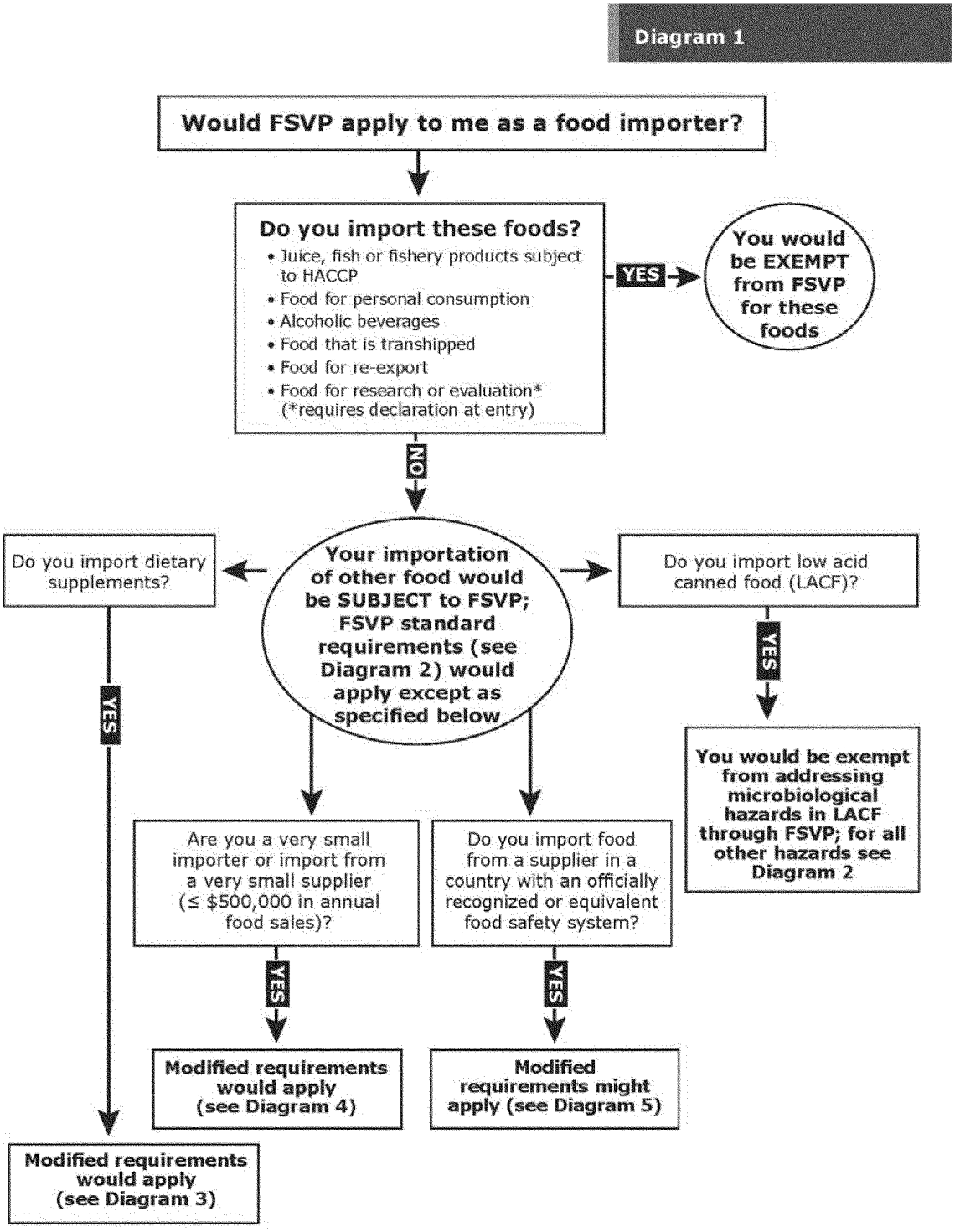


The proposed FSVP regulations would require importers to:

(1) Review the compliance status of foods and potential foreign suppliers. Before importing a food from a foreign supplier, importers would be required to review the compliance status of the food and the foreign supplier, including whether either is the subject of an FDA warning letter, import alert, or certification requirement relating to the safety of the food. These documents are or would be available at FDA's Web site.

(2) Determine the hazards reasonably likely to occur with each food. Importers could conduct their own analysis of the potential hazards with a food or review and evaluate the hazard analysis conducted by the food's foreign supplier.

(3) Conduct supplier verification activities. Importers would need to maintain a written list of foreign suppliers and establish written verification procedures. Importers would need to verify that hazards identified as reasonably likely to occur in a food they import are being adequately controlled. If the importer or its customer is controlling a hazard, the proposed rule would require the importer to document such control. For other hazards, the proposed rule

presents two alternative proposals for requirements regarding verification activities. Under Option 1 of this co-proposal, onsite auditing of the foreign supplier would be required for hazards to be controlled by the foreign supplier when there is a reasonable probability that exposure to the hazard will result in serious adverse health consequences or death. Onsite auditing also would be required under Option 1 for microbiological hazards in certain raw agricultural commodities (RACs) that are fruits or vegetables. Audits could be conducted by auditors that are accredited in accordance with the accreditation system that FDA is developing to implement section 307 of FSMA, but the proposal would not require the use of accredited auditors. Also, instead of an onsite audit, an importer could rely on the results of an inspection of the foreign supplier conducted by FDA or the food safety authority of a country whose food safety system FDA has officially recognized as comparable or determined to be equivalent to that of the United States.

For other hazards, including less serious hazards and hazards that the foreign supplier verifies have been controlled by its supplier, importers would have the flexibility under Option 1 to choose the verification activity or activities that will provide sufficient assurance that the hazards are adequately controlled. These activities could include onsite auditing of the foreign supplier, periodic or lot-by-lot sampling and testing, periodic review of the supplier's food safety records, and any other procedure that an importer has established as being appropriate to verify adequate control of a hazard.

Option 2 of the co-proposal would allow importers to choose from among these verification activities for all types of hazards not controlled by the importer or its customer. In determining the appropriate verification activities and how frequently they should be conducted, the importer would need to consider the risk presented by the hazard, the probability that exposure to the hazard will result in serious harm, and the food and foreign supplier's compliance with U.S. food safety regulations.

(4) Review complaints, investigate adulteration or misbranding (with respect to allergen labeling), and take corrective actions in the case of supplier noncompliance.

(5) Reassess the effectiveness of its FSVP when the importer becomes aware of new information about potential hazards associated with a food, or otherwise every 3 years.

(6) Ensure that the importer's name and Dun and Bradstreet Data Universal Numbering System (DUNS) number is provided for each line of entry of food.

(7) Maintain records of their FSVP activities.

These ''standard'' FSVP requirements are summarized in Diagram 2 (under Options 1 and 2) below:

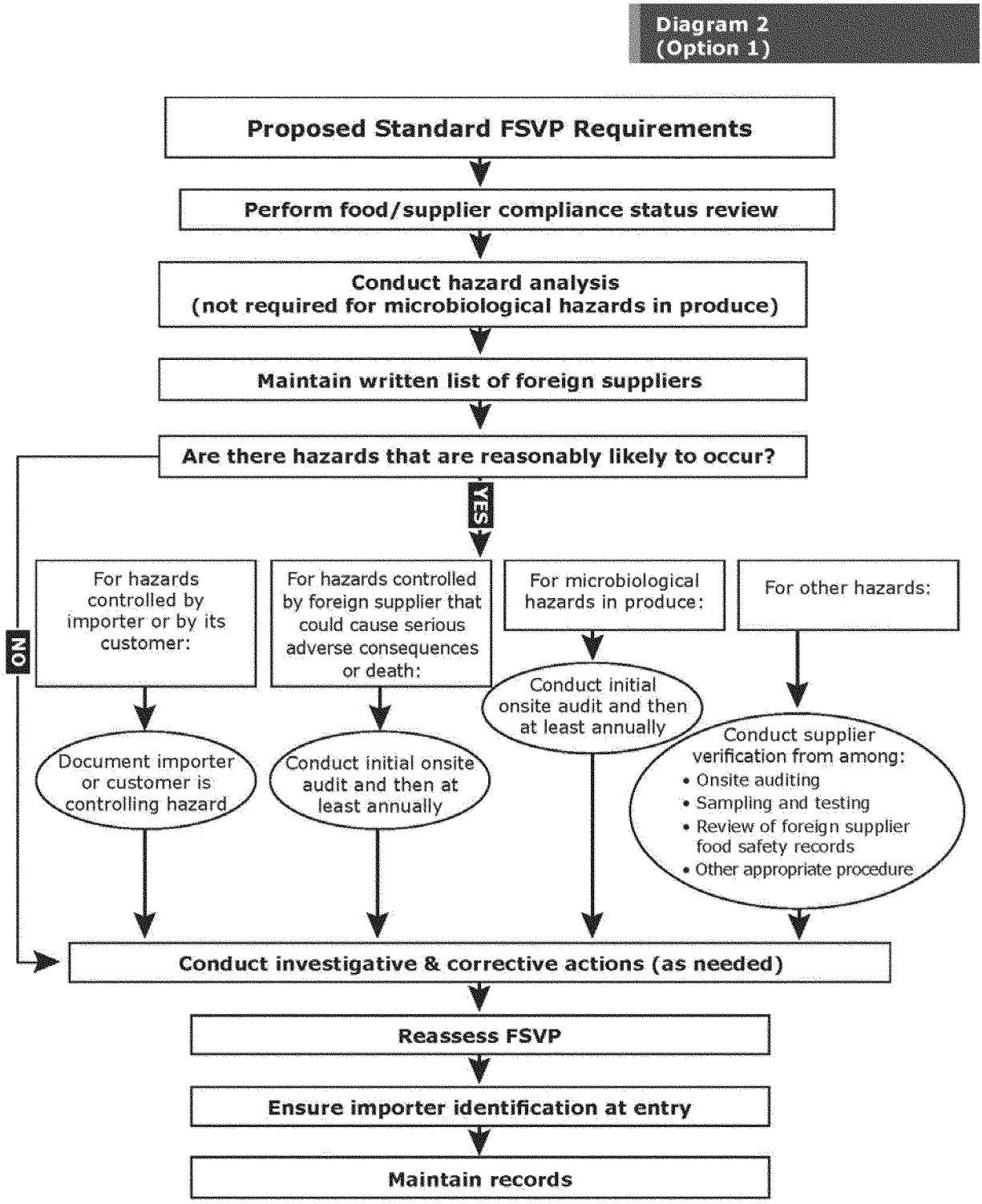
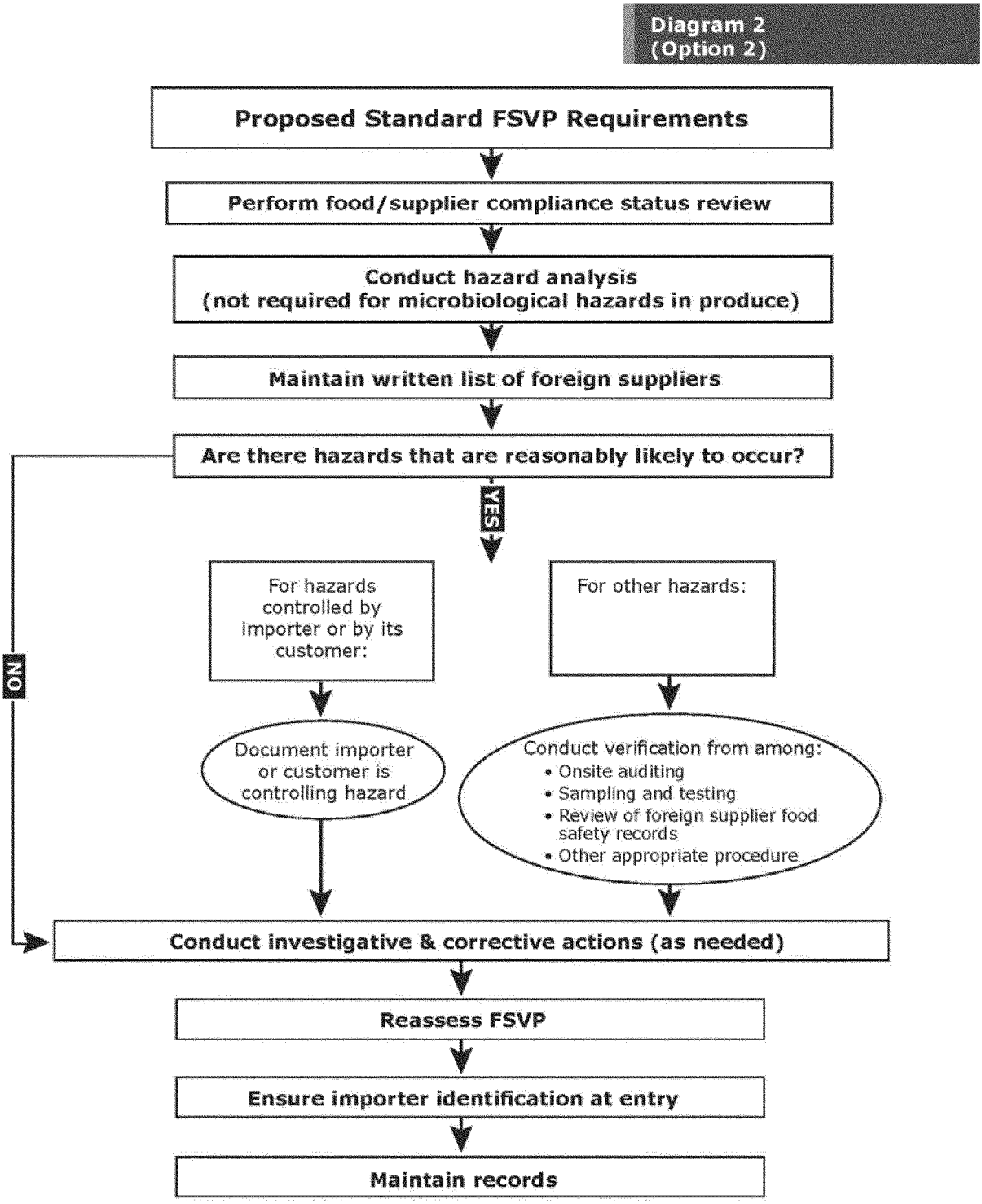


Diagram 2
(Option 1)
Proposed Standard FSVP Requirements
Perform food/supplier compliance status review
Conduct hazard analysis
(not required for microbiological hazards in produce)
Maintain written list of foreign suppliers
Are there hazards that are reasonably likely to occur?
YES
NO
For hazards controlled by importer or by its customer:
For hazards controlled by foreign supplier that could cause serious adverse consequences or death:
For microbiological hazards in produce:
For other hazards:
Document importer or customer is controlling hazard
Conduct initial onsite audit and then at least annually
Conduct initial onsite audit and then at least annually
Conduct supplier verification from among:
• Onsite auditing
• Sampling and testing
• Review of foreign supplier food safety records
• Other appropriate procedure
Conduct investigative & corrective actions (as needed)
Reassess FSVP
Ensure importer identification at entry
Maintain records

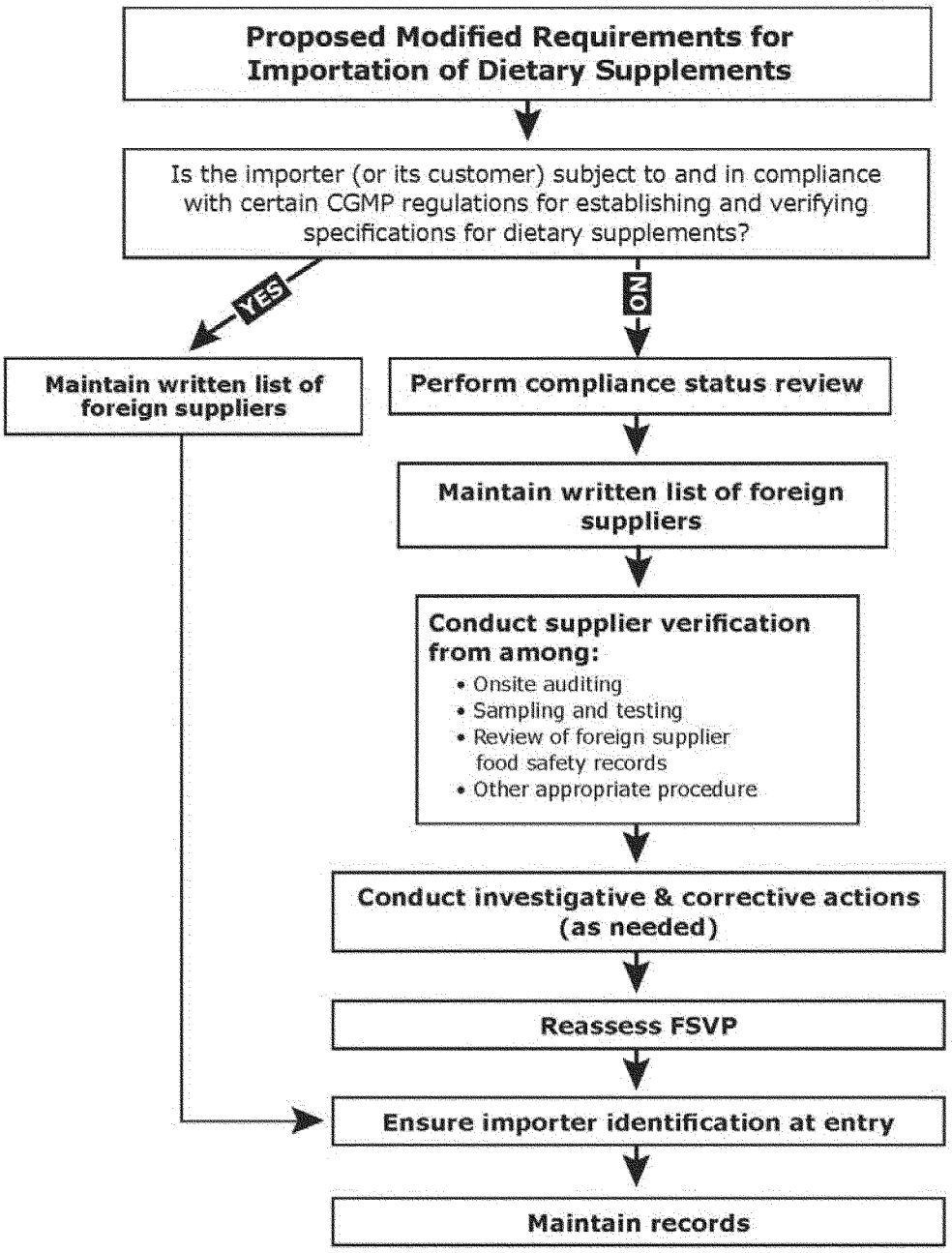


Modified Provisions for Certain Types of Importers

We are proposing several exceptions to the standard FSVP requirements for certain types of foods and importers. First, as shown in Diagram 3 below, for dietary supplements and dietary supplement components, importers who establish and verify compliance with certain specifications (concerning dietary supplement components, labels, packaging, and labeling) under the dietary supplement CGMP regulations would not be required to comply with most of the standard FSVP requirements, including hazard analysis and standard supplier verification activities. The same would apply to importers whose customer is required to establish such specifications and verify that they are met, except that the importer would have to obtain written assurance that its customer is complying with those requirements. On the other hand, importers of finished dietary supplements would be required to comply with most of the standard FSVP requirements, but they would not have to conduct hazard analyses, and their supplier verification activities would focus on verifying that the supplier is in compliance with the dietary supplement

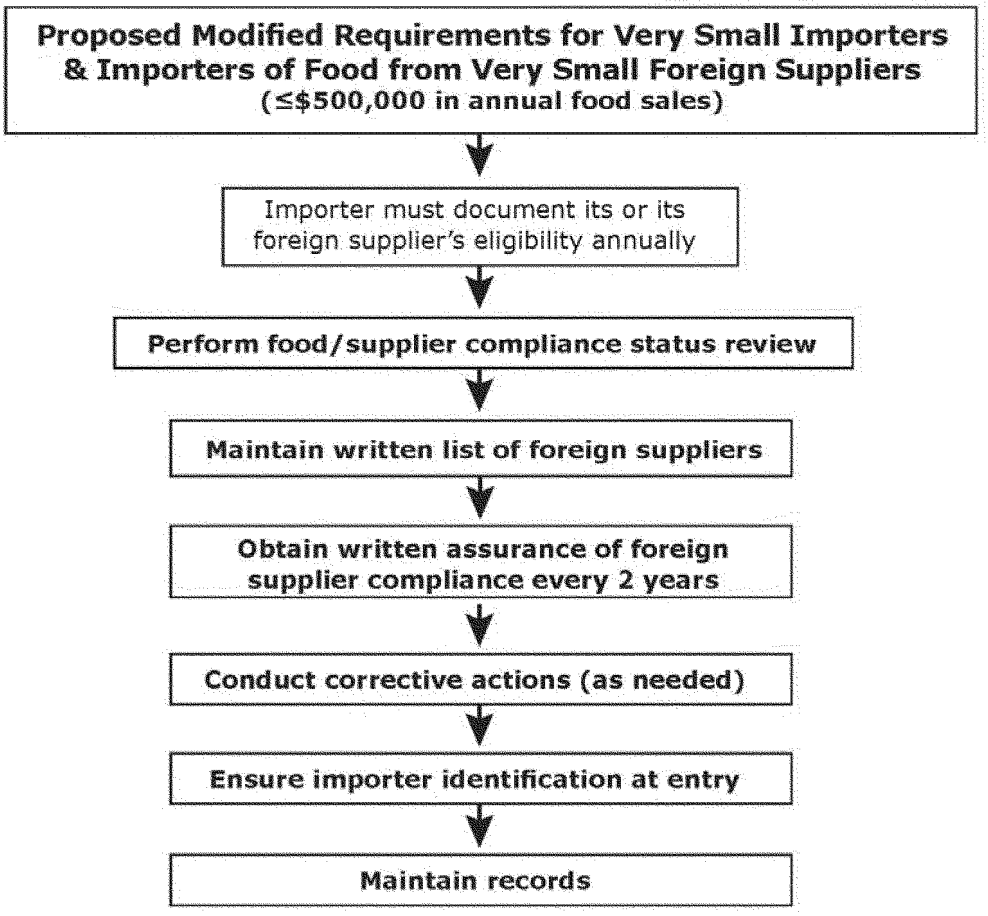
CGMP regulations, rather than verifying that hazards identified as reasonably likely to occur are being adequately controlled.

Diagram 3



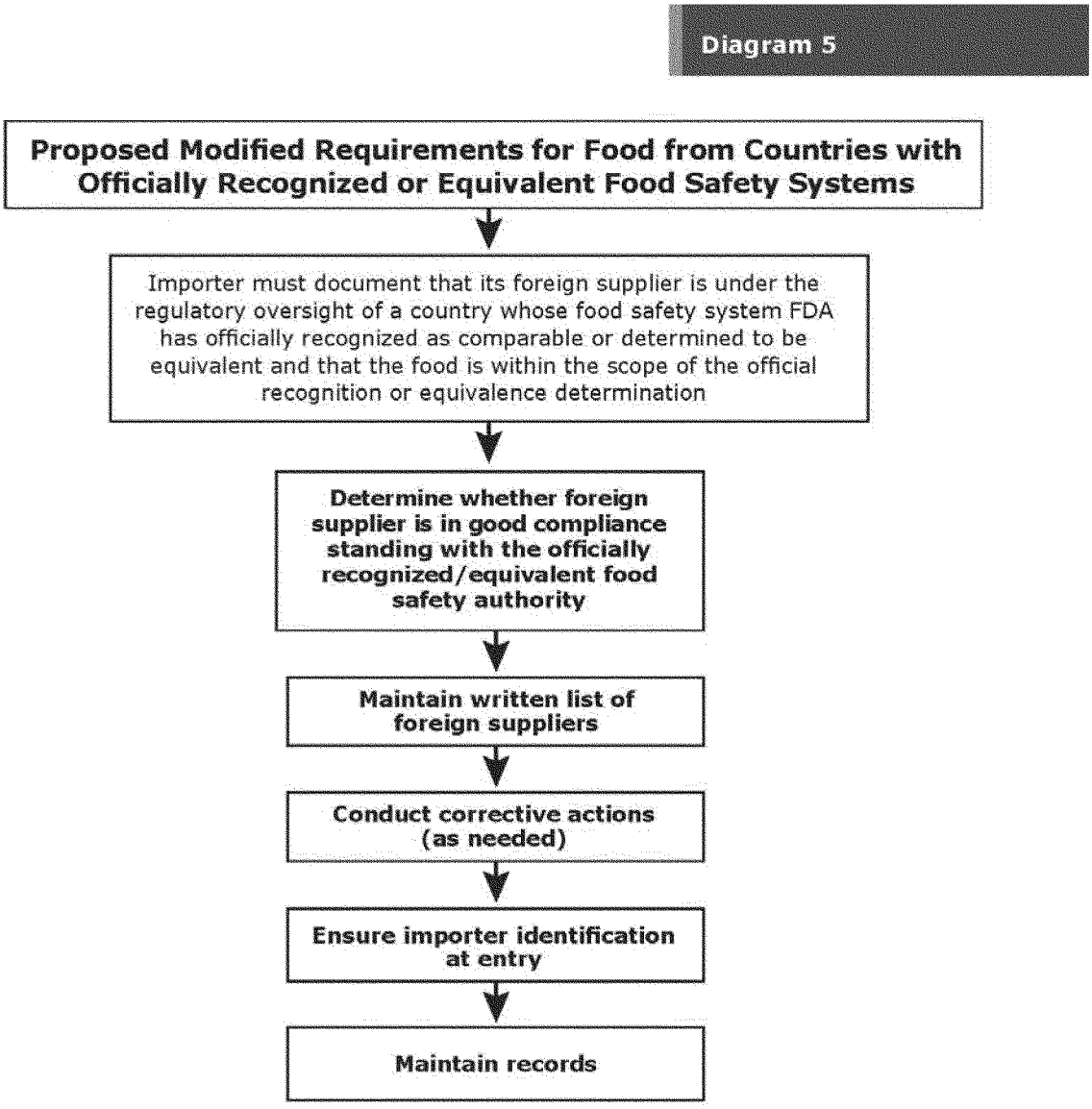
Second, as shown in Diagram 4 below, the proposed rule would establish modified FSVP requirements for very small food importers and importers of food from very small foreign suppliers (i.e., entities with annual food sales of no more than $500,000). Because of the relatively small volume of food imported by and from these entities, which should reduce consumers' exposure to, and therefore potential risk from, the imported food, we are proposing that in these situations the importer would not be required to conduct hazard analyses and would be able to verify their foreign suppliers by obtaining written assurance that describes the processes and procedures the suppliers use to ensure the safety of the food.

Diagram 4



Third, as shown in Diagram 5 below, the proposed rule would exclude from most of the standard FSVP requirements (including hazard analysis and verification that identified hazards are adequately controlled) food from a foreign supplier in a country whose food safety system FDA has officially recognized as comparable or determined to be equivalent to that of the United States, provided that:

- The food is within the scope of FDA's official recognition or equivalency determination regarding the food safety authority of the country in which the foreign supplier is located; and
- The importer determines that the foreign supplier of the food is in good compliance standing with the food safety authority of the country in which the foreign supplier is located.



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Costs and Benefits

We summarize the annualized costs (over a 10-year time period discounted at both 3 percent and 7 percent) of the two options for the proposed rule in the table immediately below.

	3 percent	7 percent
Co-Proposal Option 1	$472,971,342	$473,380,038
Co-Proposal Option 2	461,407,455	461,821,706

Although the FSVP proposed rule would not itself establish safety requirements for food manufacturing and processing, it would benefit the public health by helping to ensure that imported food is produced in compliance with other applicable food safety regulations. The Preliminary Regulatory Impact Analyses for the proposed rules on hazard analysis and preventive controls for human food and standards for produce safety consider and analyze the number of illnesses and deaths that the proposed regulations are aimed at reducing. The greater the compliance with those regulations, the greater the expected reduction in illnesses and deaths as well as the costs associated with them. The proposed rule on FSVPs is an important mechanism for improving and ensuring compliance with the above-noted food safety regulations as they apply to imported food. For this reason, we account for the public health benefits of the FSVP proposed rule in the preventive controls, produce safety, and other applicable food safety regulations instead of in this rule.

I. Background

A. Background and Legal Authority

In fiscal year 2011, nearly 10.5 million product lines of food (representing unique food products) were imported into the United States (Ref. 1). Human and animal food constitutes nearly 40 percent of all imported product lines regulated by FDA. About 15 percent of all food consumed in the United States is imported, including approximately 50 percent of fresh fruit and 20 percent of fresh vegetables (Ref. 2).

Each year, about 48 million Americans (1 in 6) get sick, 128,000 are hospitalized, and 3,000 die from foodborne diseases, according to estimates from the Centers for Disease Control and Prevention (CDC). Several foodborne disease outbreaks have been traced to imported food, including

outbreaks resulting from consumption of imported fruits, vegetables, and nuts (Ref. 3).

FSMA (Pub. L. 111–353), signed into law by President Obama on January 4, 2011, enables FDA to better protect public health by helping to ensure the safety and security of the U.S. food supply, including both domestic and imported food. FSMA enables us to focus more on preventing food safety problems rather than primarily reacting to problems after they occur. The law also provides us with new enforcement authorities to help us achieve higher rates of compliance for both domestic and imported food with prevention- and risk-based safety standards and to better respond to and contain problems when they do occur.

Section 301 of FSMA adds section 805 to the FD&C Act (21 U.S.C. 384a) to require persons who import food into the United States to perform risk-based foreign supplier verification activities for the purpose of verifying the following: (1) The food is produced in compliance with section 418 (concerning hazard analysis and risk-based preventive controls) or 419 (concerning standards for the safe production and harvesting of certain fruits and vegetables that are RACs) of the FD&C Act (21 U.S.C. 350g and 350h), as appropriate; (2) the food is not adulterated under section 402 of the FD&C Act (21 U.S.C. 342); and (3) the food is not misbranded under section 403(w) of the FD&C Act (21 U.S.C. 343(w)) (concerning food allergen labeling). Section 805(c) of the FD&C Act directs FDA to issue regulations on the content of FSVPs. Section 805(c)(2)(A) states that these regulations shall require that the FSVP of each importer be adequate to provide assurances that each of the importer's foreign suppliers produces food in compliance with processes and procedures, including risk-based preventive controls, that provide the same level of public health protection as those required under sections 418 or 419 of the FD&C Act, as appropriate, and in compliance with sections 402 and 403(w) of the FD&C Act. Section 805(c)(2)(B) states that these regulations shall include such other requirements as FDA deems necessary and appropriate to verify that food imported into the United States is as safe as food produced and sold within the United States.

Section 805(c)(3) of the FD&C Act directs FDA to, as appropriate, take into account differences among importers and types of imported food, including based on the level of risk posed by the imported food. Section 805(c)(4) states that verification activities under FSVPs may include monitoring records for shipments, lot-by-lot certification of compliance, annual onsite inspections, checking the hazard analysis and risk-based preventive control plans of foreign suppliers, and periodically testing and sampling shipments of imported products. Section 805(g) directs FDA to publish and maintain a list of importers participating under this section on the Agency's Web site.

Section 301(b) of FSMA amends section 301 of the FD&C Act (21 U.S.C. 331) by adding section 301(zz), which designates as a prohibited act the importation or offering for importation of a food if the importer (as defined in section 805 of the FD&C Act) does not have in place an FSVP in compliance with section 805. In addition, section 301(c) of FSMA amends section 801(a) of the FD&C Act (21 U.S.C. 381(a)) by stating that an article of food being imported or offered for import into the United States shall be refused admission if it appears from an examination of a sample of such an article or otherwise that the importer is in violation of section 805.

In addition to the authority specified in section 301 of FSMA (adding section 805 of the FD&C Act) to issue these proposed regulations, section 701(a) of the FD&C Act (21 U.S.C. 371(a)) gives us the authority to promulgate regulations for the efficient enforcement of the FD&C Act. Also, some aspects of the proposed FSVP regulations are being issued under section 421(b) of the FD&C Act (21 U.S.C. 350j(b)).

Section 805(b) of the FD&C Act (in section 301(a) of FSMA) directs FDA to issue guidance to assist importers in developing FSVPs. We intend to issue guidance that will provide importers with recommendations on how to comply with the various aspects of the FSVP requirements. We intend to issue a draft FSVP guidance that addresses the final, rather than proposed, regulations. We plan to issue the draft guidance concurrently with the final rule because we believe that this would facilitate more meaningful review and comment on the draft guidance. We anticipate that we will publish the finalized FSVP guidance before importers would be required to come into compliance with the FSVP regulations. We invite comment on our proposed approach to issuance of the draft and final FSVP guidances.

B. Considerations Regarding Verification of Compliance of Imported Food With U.S. Requirements

The proposed FSVP regulations would require importers of most imported food to take risk-based steps to verify that the food they import is produced in compliance with applicable FDA regulatory requirements. The proposed FSVP regulations are intended to work in tandem with other provisions of FSMA and the FD&C Act to create a more seamless system of food safety, applicable to both domestic and imported food, that provides appropriate layers of protection for U.S. consumers. At its core, FSMA establishes a proactive and risk-based approach that assigns to the food industry the primary responsibility for food safety. The use of preventive controls, which is one of the significant elements of this approach, is not new to FDA or the industry. FDA's regulations on the processing of juice and seafood products under HACCP systems, as well as our regulations on thermally processed low-acid foods packaged in hermetically sealed containers (low-acid canned foods or LACF), are examples of preventive controls regulations that we have issued to help ensure that those sectors of the food industry meet their obligation to produce safe food.

FSMA specifies additional explicit responsibilities for the rest of the food industry by emphasizing the use of prevention-oriented standards. In particular, FSMA requires food facilities that manufacture, process, pack, and hold food to implement hazard analysis and risk-based preventive controls (in section 103 of FSMA, codified in section 418 of the FD&C Act), with certain exceptions. FSMA also requires FDA to establish science-based, minimum standards for those that grow, harvest, pack, and hold produce (i.e., RACs that are fruits or vegetables) on a farm (also with certain exceptions) (in section 105 of FSMA, codified in section 419 of the FD&C Act). The intent of these requirements is to ensure that all segments of the food industry meet their responsibility under the FD&C Act to produce safe food.

1. Regulatory Approaches to Domestic and Imported Food

Although FDA applies the same safety standards to domestic and imported food marketed in the United States, we have long taken different regulatory compliance approaches to products produced domestically and abroad.

The logistics associated with conducting foreign inspections in most countries make the kind of unannounced routine inspections of establishments that FDA conducts domestically almost impossible. The same is true of ''for cause'' inspections when we have evidence of a compliance problem. FDA also has to overcome very

significant hurdles to conduct foreign civil and criminal investigations and prosecutions when violations occur.

These difficulties associated with foreign inspection and enforcement are compounded by the number of foreign firms. There are more foreign firms registered with FDA than domestic firms (even though fewer kinds of foreign firms are required to register).[1] In addition, FDA is able to physically examine only a small fraction of the food that is offered for import into this country. The number of food import lines has grown significantly over the past decade, reaching nearly 10.5 million lines in fiscal year 2011, and we expect this trend to continue in the coming years (Ref. 1; Ref. 2). Finally, foreign firms can be located in places with limited infrastructure where food safety regulatory mandates may lack requirements for risk-based preventive controls or other measures, such as export programs, that provide food safety assurances.

FSMA seeks to create a strong preventive system that places primary responsibility for food safety on industry, but also continues the practice, accepted by the Codex Alimentarius Commission (Codex) (see section I.B.3 of this document), of using a different compliance approach for imported food. For inspections, section 201 of FSMA requires that FDA increase the frequency of inspections at all facilities, but prescribes different rates for domestic and foreign facilities. More specifically, FDA is to inspect domestic high-risk facilities at least every 3 years, after an initial inspection within the first 5 years of FSMA's enactment. For domestic non-high-risk facilities, we must inspect at least every 5 years, after an initial inspection within the first 7 years of enactment. In contrast, FSMA only requires that we conduct at least 600 foreign inspections in the first year after enactment, and then doubles that inspection requirement each year for the next 5 years. In 2016, FDA would be required to do 19,200 foreign inspections.[2] Because there are currently more than 250,000 foreign food facilities registered to export food to the United States (in contrast to approximately 167,000 domestic food facilities) (Ref. 1), even completing 19,200 foreign inspections in 2016 would translate to a statutory inspection rate of less than once every 10 years.

The preventive controls and produce safety regulations discussed in section I.B.2 of this document, which are cornerstones of FSMA's strong preventive system and place primary responsibility for food safety on industry, will also apply somewhat differently to domestic and foreign producers. Under FSMA, with limited exceptions, preventive controls must be adopted by firms that are required to register with FDA. For U.S. firms, that means that most domestic facilities that manufacture, process, pack, or hold food must implement preventive controls. In contrast, under section 418 of the FD&C Act, far fewer foreign firms will be subject to preventive controls requirements. The only foreign firms that will be subject to those requirements are those facilities that export to the United States without further manufacturing/processing by another facility, except for the addition of labeling or any similar activity of a de minimis nature (section 418; 21 CFR 1.225 and 1.226).

Because of the different challenges to U.S. government oversight of foreign food establishments exporting to the United States, FSMA includes several provisions that focus on imported food, including the requirement that importers establish FSVPs. FSMA also states (in section 404) that the provisions of the act and any amendments to the FD&C Act may not be construed in a way that is inconsistent with the agreement establishing the World Trade Organization (WTO) or any other treaty or international agreement to which the United States is a party. The FSVP provisions in FSMA ensure that U.S. importers, who are domestic entities, share responsibility for food safety with the foreign suppliers of those foods by requiring that importers perform risk-based supplier verification activities. This requirement, in conjunction with FDA oversight of importers, is vital to ensuring a consistent level of protection for domestic and imported foods.

FSMA's FSVP provisions build on existing approaches to importer regulation. Importers of juice and certain seafood products have for more than a decade been required to comply with FDA regulations designed to help ensure that these imported products are processed in accordance with regulations on HACCP systems for juice and seafood products in parts 120 and 123 of FDA's regulations (Title 21 of the Code of Federal Regulations) (21 CFR parts 120 and 123), respectively. The regulations applicable to seafood importers in § 123.12 became effective on December 18, 1997 (see 60 FR 65096, December 18, 1995), and the regulations applicable to juice importers in § 120.14 became effective on January 22, 2002 (see 66 FR 6138, January 19, 2001). The principal components of both the juice and seafood importer requirements are as follows:

- Establish product specifications designed to ensure that each product is not adulterated.
- Implement affirmative steps to ensure that products being offered for entry into the United States were processed under controls that meet the requirements of the relevant HACCP regulations.
- Have evidence that products offered for U.S. entry have been processed under conditions that comply with the applicable HACCP regulations.

2. Proposed Rules on Preventive Controls and Produce Safety

The understanding that the principal responsibility for food safety resides with industry forms the basis of our proposed regulations implementing not only the FSVP provisions but also the preventive controls and produce safety provisions of FSMA. On January 16, 2013, FDA published, in accordance with section 418 of the FD&C Act, a proposed rule on CGMP and hazard analysis and risk-based preventive controls for human food (the ''Preventive Controls Proposed Rule'') (78 FR 3646). On the same date that we published the Preventive Controls Proposed Rule, we also published, in accordance with section 419 of the FD&C Act, a proposed rule on standards for the growing, harvesting, packing, and holding of produce for human consumption (the ''Produce Safety Proposed Rule'') (78 FR 3503). Although Congress did not specifically direct us to include provisions on supplier verification in the preventive controls regulations (in contrast to its directive to establish FSVP regulations), section 103(a) of FSMA (section 418(o)(3) of the FD&C Act) states that supplier verification activities that relate to the safety of food are included among the appropriate preventive controls procedures, practices, and processes that might be used by food manufacturers and processors. Approval and verification of suppliers of raw materials and ingredients is widely accepted in the domestic and international food safety community, and, as stated in the Preventive Controls Proposed Rule, we believe that such programs are an important part of an effective preventive controls approach.

[1] Unlike domestic facilities, a foreign facility is not required to register with FDA if the food undergoes further manufacturing/processing (other than de minimis) outside the United States (21 CFR 1.226).

[2] The Agency's ability to fully meet the foreign facility inspection requirements is contingent upon having adequate resources.

Therefore, although we did not propose specific regulations on supplier verification in the Preventive Controls Proposed Rule, we requested comment on when and how approval and verification of suppliers of raw materials and ingredients are an appropriate part of preventive controls (78 FR 3646 at 3665 to 3667). We sought comment on several different aspects of supplier approval and verification programs, including whether to require that a facility consider regulatory information about the supplier, whether to specify that the type of verification conducted be linked to the seriousness of the hazard in a food, and whether to specify the frequency with which verification activities should be conducted. In addition, we stated that ''FDA intends to align regulations implementing supplier verification under section 418 and regulations implementing FSVP under section 805 to the fullest extent'' to avoid imposing duplicative requirements on entities under those regulations (because they are both a registered food facility and a food importer). We also emphasized the importance of ensuring that any supplier verification provisions that are included in the preventive controls and FSVP regulations comport with U.S. international obligations, including those under the WTO's Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) (78 FR 3646 at 3767). Elsewhere in this document, we discuss particular areas where we believe it is important to coordinate the FSVP and preventive controls regulations.

3. Consistency With Relevant International Standards and Agreements

As noted previously, section 404 of FSMA states that the provisions of FSMA are not to be construed in a manner inconsistent with U.S. international obligations. As a WTO Member, the United States must act consistently with all WTO obligations, including those contained in the SPS Agreement (Ref. 4). FSMA was notified to the WTO on February 14, 2011 (G/SPS/N/USA/2156) (Ref. 5), to provide information on the act to WTO Members. The notification included an electronic mailbox link to receive comments from Members. Several comments have been received via the mailbox. The comments note a high degree of interest in FSMA implementation, particularly with respect to how implementation will impact developing countries.

The proposed FSVP regulations recognize the relevance of the work of Codex in establishing international food safety standards, guidelines, and recommendations. Codex was formed in 1963 by the Food and Agriculture Organization and the World Health Organization of the United Nations to develop food standards, guidelines, and related texts such as codes of practice, and is recognized by the WTO as the international standards organization for food safety. In describing the general characteristics of food import control systems, the Guidelines for Food Import Control Systems (CAC/GL 47–2003) (Ref. 6) developed by the Codex Committee on Food Import and Export Inspection and Certification Systems recognize a number of related concepts, including: that countries can set their own appropriate levels of protection (para. 1); that standards should be based on risk and, as far as possible, applied equally to imported and domestic food (paras. 2, 4, 5); that there is a potential need for different approaches to compliance monitoring of domestic and imported food to ensure consistent levels of protection (e.g., para. 15); and that there is utility in conducting audits, along with using other tools, in addition to assessing importer controls to ensure that imported foods are safe, including importers' use of supplier verification systems (e.g., paras. 11, 36).

4. Public Comments on FSVPs

Our development of the proposed FSVP regulations also has been informed by the comments on FSVPs provided at the public meeting on the import safety provisions of FSMA on March 29, 2011, and the public hearing on comparability of food safety systems and import practices of foreign countries on March 30–31, 2011, as well as the comments submitted to the public dockets for these matters (i.e., the docket for this rulemaking, FDA–2011–N–0143, and docket FDA–2011–N–0135).

C. Principal Features of the Proposed Rule

Consistent with section 805 of the FD&C Act, we are proposing a flexible approach to foreign supplier verification that addresses risk-based differences among certain types of food and their importers. We have tentatively concluded that we should focus the regulations on foreseeable food safety risks rather than all risks covered by the various adulteration provisions in section 402 of the FD&C Act. We therefore are proposing that importers develop and implement FSVPs to adequately verify the control of all hazards that are reasonably likely to occur with the food being imported. We believe that this approach, which is well accepted and understood throughout the food industry as a key component of HACCP and preventive controls, also provides the most comprehensive risk-based framework in which importers can evaluate potential products and suppliers and conduct appropriate verification efforts.

We emphasize that by using this approach to determining which hazards importers should focus on, we do not intend to indirectly impose preventive controls requirements on importers or their suppliers when they are not subject to the proposed preventive controls regulations. For example, as discussed in the Produce Safety Proposed Rule, we have already identified the reasonably foreseeable microbiological hazards associated with produce and are proposing requirements designed to ensure that those hazards are adequately controlled. Therefore, the proposed rule would not require importers of RACs that are fruits or vegetables and that are subject to the regulations on produce safety in proposed part 112 (21 CFR part 112) to reanalyze these microbiological hazards. In addition, in part because section 418 of the FD&C Act contains an exemption relating to facilities that manufacture, process, pack, or hold dietary supplements, we are proposing a modified verification approach for such products. We also are proposing modified FSVP requirements for food from very small foreign suppliers (as determined by annual food sales), and many such suppliers would be exempt from preventive controls as ''qualified facilities'' under section 418. The proposed rule also would establish modified requirements for food imported by very small importers (matching the requirements for food from very small foreign suppliers). Modified requirements also would apply to food from a foreign supplier in, and under the regulatory oversight of, a country whose food safety system FDA has officially recognized as ''comparable'' to that of the United States (e.g., through a signed systems recognition arrangement or other agreement between FDA and the country establishing official recognition of the foreign food safety system) or determined to be equivalent to that of the United States, provided the importer documents that certain conditions are met.

Another principal feature of the proposed rule is that we are presenting two different alternative proposals regarding the requirements for foreign supplier verification activities. Under Option 1, for the importation of food with hazards that are reasonably likely

to cause serious adverse health consequences or death to humans or animals (SAHCODHA) (e.g., many microbiological hazards), the importer would be required, at a minimum, to conduct or obtain the results of an annual onsite audit to ensure that the foreign supplier is adequately addressing the hazards. In other situations involving less serious hazards (e.g., illegal residues of pesticides or animal drugs), importers would have more flexibility to choose an appropriate supplier verification method. Under Option 2 of the co-proposal, importers would have to select a verification activity from among onsite auditing, sampling and testing, review of the supplier's food safety records, or some other appropriate procedure, taking into account the risk presented by the hazard in the food, the probability that exposure to the hazard will result in serious harm, and the food and supplier's status of compliance with U.S. food safety requirements.

Importers have always had the responsibility to offer for entry into the United States products that are not adulterated (60 FR 65096 at 65153). Section 301(a) of the FD&C Act makes it a prohibited act to introduce an adulterated food into interstate commerce, which means that an importer would commit a prohibited act if it offered for import a food that is adulterated under section 402 of the FD&C Act. While many food importers already conduct activities to verify the safety of the foods they import, establishing and following FSVPs will necessitate changes to the operations of many importers, especially those that have not previously conducted significant verification activities. Although many importers will need to change at least some of their business practices and incur costs to comply with the FSVP requirements, conducting foreign supplier verification activities will help these companies ensure that the products they import meet U.S. requirements and are safe for consumption.

II. Description of the Proposed Rule

We are proposing a new subpart L to part 1 of the FDA regulations (21 CFR part 1), entitled ''Foreign Supplier Verification Programs for Food Importers,'' to specify the content of FSVPs for importers of food for humans and animals.

A. Definitions (Proposed § 1.500)

Proposed § 1.500 sets forth the meaning of several terms that we propose to use in the FSVP regulations. Some of the definitions are self-explanatory or are being used for consistency with the Preventive Controls Proposed Rule; we discuss the definitions for which additional explanation is appropriate.

1. Audit

As set forth in proposed § 1.506(g) and (h) and discussed in section II.G of this document, the proposed rule would require onsite auditing of foreign suppliers in certain circumstances (under one proposed option) and permit onsite auditing as a mechanism for supplier verification under other circumstances. Proposed § 1.500 would define *audit* as the systematic, independent, and documented examination (through observation, investigation, records review, and, as appropriate, sampling and laboratory analysis) to assess a foreign supplier's food safety processes and procedures.

2. Food

Proposed § 1.500 would define *food* as having the meaning given in section 201(f) of the FD&C Act (21 U.S.C. 321(f)), except that it would not include pesticides as defined in 7 U.S.C. 136(u). As discussed in the preamble to the interim final rule entitled ''Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002,'' pesticides, including those used in or on food for human or animal use, are comprehensively regulated by the Environmental Protection Agency (69 FR 58974 at 58986, October 10, 2003). For the same reason, we tentatively conclude that pesticides were not intended to be considered ''food'' for purposes of section 805 of the FD&C Act and the FSVP regulations. We request comment on this exclusion and on whether there should be additional exclusions from the definition of food. Comments seeking additional exclusions should provide specific justifications.

3. Foreign Supplier

Proposed § 1.500 would define *foreign supplier* as the establishment that manufactures/processes the food, raises the animal, or harvests the food that is exported to the United States without further manufacturing/processing by another establishment, except for further manufacturing/processing that consists solely of the addition of labeling or any similar activity of a de minimis nature.

We tentatively conclude that the proposed definition of foreign supplier makes the term generally consistent with the definition of foreign facility under the preventive controls section of the FD&C Act. Section 418(o) defines ''facility'' as a domestic or foreign facility that is required to register with FDA under section 415 of the FD&C Act (21 U.S.C. 350d). Section 415(b)(3)(A) defines ''foreign facility'' as a facility that manufactures, processes, packs, or holds food, but only if food from such facility is exported to the United States without further processing or packaging outside the United States. Because (as discussed in section II.B of this document) importers generally must verify that, among other things, their foreign suppliers produce food in compliance with processes and procedures that provide the same level of public health protection as those required under section 418 of the FD&C Act, we believe that it is appropriate to define foreign suppliers in a manner that is generally consistent with the scope of section 418.

However, our proposed definition of foreign supplier does not include firms that only pack or hold food even if they are required to register with FDA under section 415 of the FD&C Act. We tentatively conclude that Congress intended the importer to verify a single foreign supplier for a particular shipment of a food and, when several entities are required to register as foreign facilities with respect to that food, excluding a subsequent (and registered) packer or holder would be consistent with this intent. As stated previously in this document, the proposed rule would state that the addition of labeling or any similar activity of a de minimis nature does not constitute further processing or packaging. This proposed limitation to the definition of foreign supplier is consistent with FDA's regulations on the registration of foreign food facilities in § 1.226(a). Because section 805 of the FD&C Act is not limited to suppliers that are subject to section 418 of the FD&C Act, the proposed definition of foreign supplier is not limited to registered facilities. In addition to establishments that manufacture/process food, the definition also encompasses establishments that raise animals or harvest food (unless the animal or harvested food is further manufactured or processed by another establishment).

4. Hazard and Hazard Reasonably Likely To Occur

Proposed § 1.500 would define *hazard* as any biological, chemical, physical, or radiological agent that is reasonably likely to cause illness or injury in the absence of its control. Proposed § 1.500 would define *hazard reasonably likely to occur* as a hazard for which a prudent

importer would establish controls or verify that the supplier controls because experience, illness data, scientific reports, or other information provides a basis to conclude that there is a reasonable possibility that the hazard will occur in the type of food being imported in the absence of those controls. These definitions match those that appear in the Preventive Controls Proposed Rule.

5. Importer

The term ''importer'' is defined in section 801(a)(2) of the FD&C Act as follows: ''(A) the United States owner or consignee of the article of food at the time of entry of such article into the United States; or (B) in the case when there is no United States owner or consignee as described in subparagraph (A), the United States agent or representative of a foreign owner or consignee of the article of food at the time of entry of such article into the United States.''

Under proposed § 1.500, the importer of a food would be the U.S. owner of the food if there is one or the consignee if there is not a U.S. owner at the time of entry. Thus, *importer* would be defined as the person in the United States who has purchased an article of food that is being offered for entry into the United States; if the article of food has not been sold at the time of U.S. entry, the importer would be the person in the United States to whom the article has been consigned at the time of entry; if the article of food has not been sold or consigned at the time of U.S. entry, the importer would be the U.S. agent or representative of the foreign owner or consignee at the time of entry.

Under the proposed definition, the importer of an article of food might be, but would not necessarily be, the importer of record of the article, i.e., the individual or firm responsible for making entry and payment of import duties. We agree with the majority of comments we received on how to define ''importer,'' which stated that the person who caused a food to be imported is the person who should be responsible for verifying that the food was produced in accordance with applicable U.S. safety requirements. This person has a direct financial interest in the food and is most likely to have knowledge and control over the product's supply chain. This person is more likely to be the food's U.S. owner (or consignee) than the importer of record for the food, which might be an express consignment operator with little to no knowledge of the safety regulations applicable to the products for which they obtain clearance from U.S. Customs and Border Protection (CBP).

In cases in which a food has not been sold or consigned to a person in the United States at the time of entry, the foreign owner or consignee would need to have a U.S. agent or representative who would be responsible for meeting the FSVP requirements. To make this clear, proposed § 1.509(a) states (as discussed in section II.J.1 of this document) that before an article of food is imported or offered for import into the United States, the foreign owner or consignee of the article (if there is no U.S. owner or consignee) must designate a U.S. agent or representative as the importer of the food for the purposes of the definition of ''importer'' in § 1.500. This would ensure that there is an entity in the United States who is responsible for meeting the various FSVP requirements, which would improve importer accountability and Agency oversight and enforcement.

Some importers obtain food from foreign suppliers who are part of the same corporate structure as the importer and who may, along with the importer, be subject to a single integrated, company-wide approach to food safety in which hazards are controlled and verified by a common supply chain management system. We request comment on whether importers should not be required to conduct foreign supplier verification, or should be subject to different FSVP requirements, when importing food from entities under the same corporate ownership and, if so, the specific justifications and conditions under which foreign supplier verification should not be required or should be modified.

6. Qualified Individual

Proposed § 1.500 would define *qualified individual* as a person who has the necessary education, training, and experience to perform the activities needed to meet the requirements of this subpart; this person may be, but is not required to be, an employee of the importer. Depending on the applicable requirements, a qualified individual would need to be capable of performing, for example, food hazard analysis and verification of foreign supplier processes and procedures to ensure that hazards are adequately controlled. Proposed § 1.500 further states that, regarding the performance of verification activities related to preventive controls implemented by the foreign supplier in accordance with section 418 of the FD&C Act, a qualified individual must have successfully completed training in the development and application of risk-based preventive controls at least equivalent to that received under a standardized curriculum recognized as adequate by FDA or be otherwise qualified through job experience to develop and implement a food safety system. We are proposing to define the term qualified individual in a slightly different way in the FSVP regulations than in the Preventive Controls Proposed Rule because not all of the foreign suppliers from which importers obtain their food products will be subject to the preventive controls regulations. Therefore, when an importer obtains food from a foreign supplier that is not subject to section 418 of the FD&C Act, such as a manufacturer of dietary supplements, a qualified individual performing FSVP activities for the importer would need to have appropriate education, training, and experience to conduct those activities, but would not necessarily have to be trained or have experience in the development and implementation of the particular risk-based preventive controls required under section 418. We request comment on whether the definition of qualified individual should include additional requirements regarding education, training, and experience.

As noted, the qualified individual may be, but is not required to be, an employee of the importer. The entity best suited to handling supplier verification may not fall within the definition of ''importer'' as proposed in this rule. The flexibility in the definition of qualified individual means that another entity may be able to conduct many of the supplier verification activities on the importer's behalf.

Proposed § 1.500 further states that the term qualified individual includes, but is not limited to, a third-party auditor that has been accredited in accordance with section 808 of the FD&C Act. As discussed more fully in section II.G.7.a.i of this document, section 307 of FSMA (codified in section 808 of the FD&C Act (21 U.S.C. 384d)) directs us to establish a system for the recognition of accreditation bodies that can accredit third-party auditors as being qualified to conduct food safety audits of foreign suppliers, as well as to develop model accreditation standards. Elsewhere in this issue of the **Federal Register** (78 FR XXXXX), we are publishing a proposed rule to establish a third-party accreditation system in accordance with section 808. We anticipate that in the future many importers will rely on onsite audits conducted at the request of foreign suppliers by third-party auditors accredited in accordance with section

808 to verify that the importers' foreign suppliers are producing food in accordance with U.S. requirements. We expect that this will reduce the costs of complying with the FSVP regulations for both importers and foreign suppliers by reducing the number of onsite audits that importers conduct themselves. However, even after FDA has implemented section 808 and importers begin using accredited third-party auditors to provide verification of their foreign suppliers in accordance with the FSVP regulations, we believe that it would be acceptable for an importer to rely on an audit conducted by a third-party auditor who is a qualified individual but is not accredited in accordance with section 808. We invite comment on whether, at some future date and/or under particular circumstances, importers should no longer be permitted to rely on third-party auditors who are not accredited in accordance with section 808 to conduct onsite audits or other FSVP activities.

In addition, proposed § 1.500 states that an employee of a foreign government may be a qualified individual. We believe that this provision is appropriate because foreign food safety authorities might conduct certain activities on which an importer might rely in complying with its FSVP requirements. For example, as part of an importer's supplier verification activities, the importer might rely on the results of an onsite audit of a foreign supplier conducted by an employee of the food safety authority in that country. Although a foreign food safety authority could be an accredited third-party auditor under section 808 of the FD&C Act, an importer's use of foreign government employees as qualified individuals would not be limited to such accredited auditors. We request comment on ways in which importers might rely on the actions of foreign government employees in complying with FSVP requirements.

7. Raw Agricultural Commodity

As previously stated, this proposed rule includes provisions on foreign supplier verification with respect to RACs that are fruits or vegetables. Proposed § 1.500 states that *raw agricultural commodity* means ''raw agricultural commodity'' as defined in section 201(r) of the FD&C Act (21 U.S.C. 321(r)).

8. Very Small Importer and Very Small Foreign Supplier

As stated in section I.C of this document, we propose to apply modified FSVP requirements (set forth in proposed § 1.512, discussed in section II.M of this document) to very small importers of food and to food from very small foreign suppliers. Proposed § 1.500 would define *very small importer* as an importer, including any subsidiary, affiliate, or subsidiaries or affiliates, collectively, of any entity of which the importer is a subsidiary or affiliate, whose average annual monetary value of sales of food during the previous 3-year period (on a rolling basis) is no more than $500,000, adjusted for inflation. Likewise, *very small foreign supplier* would be defined as a foreign supplier, including any subsidiary, affiliate, or subsidiaries or affiliates, collectively, of any entity of which the foreign supplier is a subsidiary or affiliate, whose average annual monetary value of sales of food during the previous 3-year period (on a rolling basis) is no more than $500,000, adjusted for inflation. The limitation of $500,000 in annual food sales is consistent with the sales limitation in the definitions of ''qualified facility'' in the Preventive Controls Proposed Rule and ''small business'' in the Produce Safety Proposed Rule. As discussed more fully in section II.M of this document, we believe that it is appropriate to establish certain modified FSVP requirements for very small importers and food from very small foreign suppliers under proposed § 1.512.

We tentatively conclude that it is appropriate to limit the scope of the definition of ''very small importer'' to those importers that have no more than $500,000 in annual food sales. Because the sales value of food is related to the volume of food being brought into the United States by the importer or shipped to this country by the supplier, use of this dollar-value ceiling would help limit the total volume of food imported under these modified provisions.

Our proposed approach to the definitions of very small importer and very small foreign supplier and the FSVP requirements for these entities is discussed further in section II.M of this document. We believe that our proposed approach to defining very small importers and foreign suppliers is an appropriate as well as workable way to determine which importers and foreign suppliers would be subject to modified FSVP requirements. We request comment on this approach, including whether the limit of $500,000 in annual food sales is appropriate. We also request comment on whether the definitions should apply only to U.S. sales of food by the importer or the foreign supplier, rather than worldwide sales by these entities.

We note that the Preventive Controls Proposed Rule includes three options for a proposed definition of ''very small business,'' a term that is relevant to three provisions of that proposed rule (78 FR 3646 at 3701). The proposal specifies three options for the limit on total annual food sales under the definition of very small business: $250,000, $500,000, or $1,000,000. We request comment on whether the definitions of very small importer and very small foreign supplier under the FSVP regulations should take into account the definition of very small business under the preventive controls regulations and, if so, what limit on total annual food sales would be appropriate for use in these definitions.

B. Applicability and Exemptions (Proposed § 1.501)

Proposed § 1.501 answers the question, ''To what foods do the regulations in this subpart apply?'' Proposed § 1.501(a) states that, except as specified otherwise in § 1.501, the regulations in subpart L apply to all food imported into the United States and to the importers of such food. Proposed § 1.501(b) through (e) set forth exemptions and exceptions from subpart L for several types of foods: food from juice and seafood HACCP facilities that are in compliance with the HACCP regulations; food imported for research or evaluation purposes; food for personal consumption; alcoholic beverages; and food that is transshipped or imported for further processing and export.

1. Exemption for Food From Juice and Seafood HACCP Facilities

In accordance with section 805(e)(1) and (e)(2) of the FD&C Act, proposed § 1.501(b) would exempt products from certain juice and seafood facilities from subpart L. Section 805(e) states that the foreign supplier verification requirements ''shall not apply to a facility if the owner, operator, or agent in charge of such facility is required to comply with, and is in compliance with,'' the HACCP regulations for seafood or juice. Section 805(e) further states that the exemption applies to ''a facility'' that is required to comply with and is in compliance with the juice or seafood HACCP regulations. This raises the question of whether the word ''facility'' in this context relates to the foreign supplier or the importer.

The language of section 805(e) of the FD&C Act mirrors the language of the juice and seafood HACCP exemption in section 418 of the FD&C Act, which exempts facilities that are required to comply with and are in compliance

with HACCP for juice or seafood from the hazard analysis and risk-based preventive controls required by that section. Given that many foreign suppliers are facilities subject to section 418, and given the role that importers play under section 805 in verifying foreign supplier compliance with applicable U.S. food safety regulations, we tentatively conclude that it was Congress's intent that section 805(e) apply to food being imported from foreign suppliers that are facilities subject to and in compliance with FDA requirements for juice or seafood HACCP. The importer would still be required to verify a foreign supplier's compliance with the juice or seafood HACCP provisions, but would do so under the regulations that are specific to those foods.

There are at least two other potential readings of section 805(e)'s language. One is that section 805(e) would apply to importers that are facilities subject to and in compliance with the juice or seafood HACCP regulations. This interpretation does not account for the fact that not all importers are facilities (e.g., a commodity broker that does not manufacture/process, pack, or hold food), so it would not exempt such an importer even if the juice or seafood products have been produced in compliance with the applicable HACCP requirements. The other reading is that section 805(e) would apply to importers, whether or not they are facilities, that are subject to the importer verification provisions of the juice or seafood HACCP regulations. However, this interpretation is not consistent with the language of section 805(e), which states that it applies to facilities. Thus, we tentatively conclude that the proposed reading that section 805(e) applies to food being imported from foreign suppliers that are facilities subject to and in compliance with FDA requirements for juice or seafood HACCP effectuates the purpose of the FSVP provisions more clearly than either of these other possible interpretations.

Therefore, proposed § 1.501(b) states that the regulations in subpart L do not apply with respect to juice, fish, and fishery products that are imported from a foreign supplier that is required to comply with, and is in compliance with, the regulations on juice in part 120 or the regulations on fish and fishery products in part 123. Proposed § 1.501(b) further states that importers of juice and seafood products that are subject to the regulations in part 120 or part 123, respectively, must comply with the requirements applicable to importers of those products under § 120.14 or § 123.12, respectively. Among other things, those provisions require importers to implement written procedures for ensuring that imported products were processed in accordance with the HACCP regulations, including the use of ''affirmative steps'' such as obtaining continuing or lot-specific certificates from an appropriate foreign government inspection authority or competent third party, or regularly inspecting foreign processor facilities. Thus, § 1.501(b) makes clear that, in accordance with section 805(e) of the FD&C Act, importers of juice or seafood HACCP products from foreign suppliers that are facilities required to comply with and in compliance with the juice or seafood HACCP regulations are not subject to the verification requirements in the FSVP regulations.

We recognize that section 805 of the FD&C Act and the implementing regulations we are proposing set forth a more comprehensive approach to verification than the existing juice and seafood HACCP regulations. As noted in section I.B of this document, the juice and seafood importer provisions were adopted more than a decade ago. The U.S. Government Accountability Office (GAO), in its April 2011 report entitled ''Seafood Safety: FDA Needs to Improve Oversight of Imported Seafood and Better Leverage Limited Resources'' (Ref. 7), noted that the seafood importer regulations allow importers to obtain a copy of the foreign processor's HACCP plan and an attestation that the foreign firm processes its seafood products in compliance with the HACCP regulations without also requiring an onsite audit. The GAO report noted some concerns that the purposes of this provision and the HACCP regulations can be defeated if a foreign processor claims to have a HACCP plan that it is not actually following and the importer does not visit the processor to determine whether the processor is implementing the plan it has provided to the importer. In light of FSMA's increased emphasis on the safety of imported food and importers' role in ensuring food safety, as well as the proposed FSVP regulations discussed in this document, we are considering whether it would be appropriate in the future to initiate a rulemaking to revise the regulations applicable to importers of juice and seafood.

2. Food Imported for Research or Evaluation or for Personal Consumption

Section 805(f) of the FD&C Act states that FDA, by notice published in the **Federal Register**, shall establish an exemption from the requirements of section 805 for articles of food imported in small quantities for research and evaluation purposes or for personal consumption, provided that such foods are not intended for retail sale and are not sold or distributed to the public. We tentatively conclude that it is appropriate to include these section 805 exemptions in the proposed regulations implementing that section to allow interested persons to comment on how we propose to implement these exemptions.

Regarding food for research or evaluation, proposed § 1.501(c) states that the regulations in subpart L do not apply to food that is imported for research or evaluation purposes, provided that:

- Such food is not intended for retail sale and is not sold or distributed to the public.
- The food is labeled with the statement ''Food for research or evaluation use.''
- When filing entry for the food with CBP, the importer of record provides an electronic declaration that the food will be used for research or evaluation purposes and will not be sold or distributed to the public.

The latter two provisions are intended to help ensure that the food is, in fact, not intended for retail sale and is not sold or distributed to the public. We tentatively conclude that they would provide an efficient and effective means of determining whether a food is exempt.

Proposed § 1.501(c) further states that food is considered to be imported for research or evaluation purposes only if it is imported in a small quantity that is consistent with a research, analysis, or quality assurance purpose and the entire quantity is used for this purpose.

Under proposed § 1.501(d), the regulations in subpart L would not apply to food that is imported for personal consumption, provided that such food is not intended for retail sale and is not sold or distributed to the public. Proposed § 1.501(d) further states that food is considered to be imported for personal consumption when it is purchased or otherwise acquired by a person in a small quantity for a non-commercial purpose and is not sold or distributed to the public.

We request comment on the proposed exemptions from the FSVP requirements for food imported for research use or for personal consumption, in particular regarding whether and how to define the amount of food that constitutes a ''small quantity.''

3. Exemption for Alcoholic Beverages

Section 116(a) of FSMA (21 U.S.C. 2206(a)) provides that, except as

provided by certain listed sections in FSMA, nothing in FSMA, or the amendments made by FSMA, shall be construed to apply to a facility that (1) under the Federal Alcohol Administration Act (27 U.S.C. 201 et seq.) or chapter 51 of subtitle E of the Internal Revenue Code of 1986 (26 U.S.C. 5001 et seq.) is required to obtain a permit or to register with the Secretary of the Treasury as a condition of doing business in the United States; and (2) under section 415 of the FD&C Act is required to register as a facility because such facility is engaged in manufacturing, processing, packing, or holding one or more alcoholic beverages (with respect to the activities of such facility that relate to the manufacturing, processing, packing, or holding of alcoholic beverages).

Section 116(b) of FSMA provides that section 116(a) shall not apply to a facility engaged in the receipt and distribution of any non-alcohol food, except that section 116(a) shall apply to a facility described in section 116(a) that receives and distributes non-alcohol food, provided such food is received and distributed (1) in a prepackaged form that prevents any direct human contact with such food and (2) in amounts that constitute not more than 5 percent of the overall sales of such facility, as determined by the Secretary of the Treasury.

Section 116(c) of FSMA provides that, except as provided in section 116(a) and (b), section 116 shall not be construed to exempt any food, other than alcoholic beverages, as defined in section 214 of the Federal Alcohol Administration Act (27 U.S.C. 214), from the requirements of FSMA (including amendments made by FSMA).

The Preventive Controls Proposed Rule includes provisions implementing the exemptions provided in section 116 of FSMA to establish by regulation the reach of the exemptions. As discussed in the Preventive Controls Proposed Rule, FDA tentatively concludes the following regarding the reach of the exemptions for the purposes of that rule:

- The phrase ''obtain a permit or register'' should be interpreted broadly, to include not only facilities that must obtain what is technically named a ''permit'' or must ''register'' with Treasury, but also those facilities that must adhere to functionally similar requirements as a condition of doing business in the United States, namely, by submitting a notice or application to Treasury and obtaining Treasury approval of that notice or application.
- The exemption would apply not only to domestic facilities that are required to secure a permit, registration, or approval from Treasury under the relevant statutes, but also to foreign facilities of a type that would require such a permit, registration, or approval if they were domestic facilities.
- Activities related to alcoholic beverages (including the manufacturing, processing, packing, or holding of alcoholic beverages) at facilities within the scope of section 116(a) of FSMA would not be subject to section 418 of the FD&C Act. Activities related to foods other than alcoholic beverages (including the receiving, manufacturing, processing, packing, holding, and distributing of such foods) would be subject to section 418 even if those activities occur at facilities that are otherwise within the scope of section 116(a) (unless they qualify for another exemption or are in prepackaged form and constitute 5 percent or less of the facility's overall sales). (For clarity, we use the term ''food other than alcoholic beverages'' rather than ''non-alcohol food'' in the Preventive Controls Proposed Rule and in this document.)
- Section 418 of the FD&C Act does not apply to the manufacturing, processing, packing, or holding of food other than alcoholic beverages to the extent that it is physically inseparable from the manufacturing, processing, packing, or holding of alcoholic beverages.

Section 116 of FSMA is premised in part upon status as a facility required to register under section 415 of the FD&C Act (section 116(a)(2) of FSMA). Under the definition in this proposed rule, an ''importer'' might be a registered facility but would not necessarily be one. If the alcoholic beverages exemption from the FSVP regulations was based on whether the importer of an alcoholic beverage was a registered facility, two firms might import the same product (e.g., a bottled alcoholic beverage) and one would be eligible for the alcoholic beverage exemption from the FSVP regulations because it is required to register (e.g., it packs or holds the alcoholic beverage), while the other would not be eligible for this exemption because it is not required to register (e.g., it is a commodity broker that does not manufacture, process, pack, or hold food for consumption in the United States, or it is a restaurant or retailer). The latter importer would need to conduct supplier verification under section 805 of the FD&C Act while the former would not. Under this interpretation, an importer would be exempt from the section 805 requirements if the importer is a facility required to register under section 415 of the FD&C Act and the importer and the food in question (i.e., the alcoholic beverage or food other than alcoholic beverages) otherwise meet the requirements for exemption under section 116 of FSMA.

An alternative approach to the alcoholic beverages exemption from the FSVP regulations would focus on the foreign supplier. If an alcoholic beverage is being imported, under our proposal the foreign supplier would, by definition, be a facility that is required to register. Our proposed definition of ''foreign supplier'' means that the supplier would be engaged in manufacturing/processing the alcoholic beverage and that this beverage would not undergo further manufacturing/processing before being exported to the United States, except for labeling or any similar activity of a de minimis nature (see 21 CFR 1.226 regarding foreign facility registration). Under this interpretation, whether an imported food is exempt from section 805 of the FD&C Act would not depend on who the importer happens to be, but the nature of the product being imported—whether the foreign supplier and the food in question (i.e., the alcoholic beverage or food other than alcoholic beverages) meet the requirements for exemption under section 116 of FSMA. This interpretation is consistent with our approach to the alcoholic beverages exemption in the Preventive Controls Proposed Rule. In considering the two proposals together, if a foreign supplier is exempt from section 418 of the FD&C Act by operation of section 116 of FSMA for a particular food, then the importer would not be required to conduct verification of the supplier for the food under section 805. For these reasons, we tentatively conclude that the second approach better effectuates the intent of section 805 and it is appropriate to exempt certain alcoholic beverages, under the conditions stated in proposed § 1.501(e), from the scope of the FSVP regulations.

Therefore, under proposed § 1.501(e)(1)(i) and (e)(1)(ii), the FSVP regulations would not apply with respect to alcoholic beverages that are imported from a foreign supplier that is a facility that meets the following two conditions:

- Under the Federal Alcohol Administration Act (27 U.S.C. 201 et seq.) or chapter 51 of subtitle E of the Internal Revenue Code of 1986 (26 U.S.C. 5001 et seq.), the facility is a foreign facility of a type that, if it were a domestic facility, would require obtaining a permit from, registering with, or obtaining approval of a notice or application from the Secretary of the Treasury as a condition of doing business in the United States; and

• Under section 415 of the FD&C Act, the facility is required to register as a facility because it is engaged in manufacturing/processing one or more alcoholic beverages.

Proposed § 1.501(e)(2)(i) and (e)(2)(ii) would specify that the FSVP regulations would not apply with respect to food other than alcoholic beverages that is imported from a foreign supplier described in § 1.501(e)(1), provided such food:

• Is in prepackaged form that prevents any direct human contact with such food; and

• Constitutes not more than 5 percent of the overall sales of the facility, as determined by the Secretary of the Treasury.

We request comment on our proposed exemption of alcoholic beverages and food other than alcoholic beverages under the conditions specified in proposed § 1.501(e).

4. Inapplicability to Food for Transshipment and Export

Some food is imported into the United States but is not distributed into the U.S. market. For example, some food is transshipped from a foreign country through the United States to a different country. In addition, food may be imported into the United States, subjected to manufacturing or processing, and exported to another country without being consumed or distributed in U.S. commerce. Section 805 of the FD&C Act applies to ''each importer'' and ''the food imported by the importer or agent of an importer.'' This could mean that the FSVP requirements apply to all food that is brought across the U.S. border except where there is a specific exemption, such as the exemption for food imported for personal consumption. However, taking into consideration the context of section 805 of the FD&C Act, under which the importer must take affirmative steps to verify the compliance of the food with U.S. safety requirements, we tentatively conclude that section 805 is not intended to apply to food that is neither consumed nor distributed in the United States. Therefore, under proposed § 1.501(f), the regulations in subpart L would not apply to food that is:

• Transshipped through the United States to another country; or

• Imported for future export and that is neither consumed nor distributed in the United States.

C. Scope of FSVP (Proposed § 1.502)

Proposed § 1.502 answers the question, ''What foreign supplier verification program (FSVP) must I have?'' This section addresses the scope of FSVPs.

As noted above, section 805(c)(2) of the FD&C Act sets forth the scope of an importer's FSVP, i.e., the program must be adequate to provide assurances that each of the importer's foreign suppliers produces food in compliance with processes and procedures that provide the same level of public health protection as those required under section 418 or 419, as appropriate, and with sections 402 and 403(w). We tentatively conclude that the scope of an appropriate FSVP should be as set forth below.

1. General Standard and Verification Approach

Proposed § 1.502(a) states that, except as specified in proposed § 1.502(b), for each food imported, the importer must develop, maintain, and follow an FSVP that provides adequate assurances that its foreign supplier is producing the food in compliance with processes and procedures that provide at least the same level of public health protection as those required under section 418 or 419 of the FD&C Act, if either is applicable, and is producing the food in compliance with sections 402 and 403(w). Under this provision, importers would be required to develop procedures for the operation of their FSVPs, such as procedures for the following:

• Review of the compliance status of foods and foreign suppliers

• Analysis of hazards reasonably likely to occur with foods

• Determination and performance of appropriate foreign supplier verification activities for foods

• Review of complaints, investigation of adulteration or misbranding, and taking of corrective actions

• Reassessment of the FSVP

• Ensuring that required information is submitted at entry

• Maintenance of records

We tentatively conclude that by developing, maintaining, and following an FSVP that meets the requirements set forth in this proposed rule, an importer would be able to provide assurances that its foreign suppliers were producing food in a manner consistent with the preventive controls or produce safety regulations (if either were applicable) as well as provide assurances that the food is not adulterated or misbranded regarding allergen labeling.

2. Low-Acid Canned Food

In accordance with section 805(e) of the FD&C Act, proposed § 1.502(b) sets forth a standard for FSVPs regarding the importation of thermally processed low-acid canned foods packaged in hermetically sealed containers (low-acid canned foods) that differs slightly from the standard in proposed § 1.502(a). Section 805(e) states that section 805 does not apply to LACF facilities that are required to comply, and are in compliance, with the FDA standards and regulations on LACF, but only with respect to the microbiological hazards regulated under part 113 (21 CFR part 113). With respect to all other types of hazards for LACF, section 805 would apply. Therefore, under proposed § 1.502(b), with respect to those microbiological hazards that are controlled by part 113, an importer of a low-acid canned food must verify and document that the food was produced in accordance with part 113. An importer of a low-acid canned food would not know if it was importing the food from a foreign supplier whose facility was in compliance with part 113 (and thus eligible for the exemption from section 805 with respect to microbiological hazards) unless it conducted some appropriate form of verification, such as auditing. We tentatively conclude that following the FSVP provisions would be an appropriate verification approach if the importer chose to follow this for all LACF hazards, including microbiological hazards. Proposed § 1.502(b) further states that, with respect to all matters that are not controlled by part 113, an importer of a low-acid canned food must have an FSVP as specified in proposed § 1.502(a).

3. Food Imported by Facilities Subject to the Preventive Controls Requirements

Many domestic food manufacturers, both large and small companies, import food ingredients for use in the food products they manufacture or process. These facilities are (with certain exceptions) subject to section 418, and they will be subject to the preventive controls regulations once those regulations become effective.

As stated in section I.B of this document, the Preventive Controls Proposed Rule seeks comment on when supplier approval and verification programs would be appropriate food safety requirements under the preventive controls regulations, as well as comment on what specific supplier approval and verification requirements are appropriate. As stated in that proposed rule and in section I.B of this document, we recognize the importance of coordinating the final preventive controls and FSVP regulations to avoid duplicative requirements, as well as the importance of ensuring that the food safety measures we adopt are consistent

with U.S. international trade obligations, including those contained in the SPS Agreement.

We request comment on how to address foreign supplier verification by importers who could be subject to both the FSVP and preventive controls regulations to prevent the imposition of any duplicative supplier verification requirements. For example, should the FSVP regulations state that an importer that is also required to establish a supplier approval and verification program under the preventive controls regulations for a food, and is in compliance with those regulations, is deemed to be in compliance with the FSVP regulations that address the same matters?

We intend to publish in the near future a proposed rule on preventive controls for animal food that will be similar to the Preventive Controls Proposed Rule applicable to human food. We expect to issue the final rule on FSVPs concurrently with the final rules on preventive controls for human food and animal food, and we expect to adopt the same approach for animal food as we do for human food regarding importers that are in compliance with any supplier verification provisions in those respective preventive controls regulations. We request comment on this proposed approach.

4. Food for Which Importers' Customers Are Subject to the Preventive Controls Requirements

In some cases, an importer's customer is a domestic food facility that would be subject to any supplier verification requirements that we might ultimately adopt as part of the preventive controls regulations. As with the above-described circumstances involving importers who themselves would be subject to any supplier verification requirements under the preventive controls regulations, we believe that requiring importers to conduct verification activities that their customers would have to conduct would not provide additional assurance of the safety of the imported food. Therefore, we request comment on how to coordinate the FSVP and preventive controls regulations to avoid imposing duplicative requirements on importers whose customers could be subject to any supplier verification requirements that are ultimately included in the preventive controls regulations. For example, would it be appropriate for the FSVP regulations to state that an importer whose customer is required to establish a supplier approval and verification program under the preventive controls regulations for a food is deemed to be in compliance with the FSVP regulations? We also request comment on what assurance, if any, importers should be required to obtain from their customer that the customer is in compliance with any preventive controls supplier verification requirements and the frequency with which they should obtain any such assurance.

D. Personnel (Proposed § 1.503)

Proposed § 1.503 answers the question, ''Who must develop my FSVP and perform FSVP activities?'' Proposed § 1.503 states that, except with respect to the requirements in proposed §§ 1.506(a) (concerning listing of foreign suppliers), 1.509 (concerning steps that an importer must take to ensure that it is identified as the importer of a food when the food is offered for entry into the United States), 1.510 (concerning record keeping), 1.511(c)(2) (concerning listing of foreign suppliers of finished dietary supplements), and 1.512(b)(3) and (b)(6) (concerning listing of foreign suppliers and record keeping by very small importers and importers of food from very small foreign suppliers), a qualified individual must develop an importer's FSVP and perform each of the activities required under subpart L. These activities include: reviewing a food and supplier's compliance status; conducting hazard analysis and foreign supplier verification; reviewing complaints, conducting investigations, and taking corrective actions; and reassessing the FSVP and making any appropriate changes.

Education and training are important to the effective development and implementation of an FSVP, including activities such as: identifying hazards that are reasonably likely to occur in foods; evaluating controls that are intended to address those hazards; assessing the appropriateness of the use of different verification activities for different types of hazards; and determining whether investigatory and corrective actions are appropriate. In addition, the products produced by the food industry are diverse, and the hazards that are reasonably likely to occur with a particular food and in a particular facility depend on a range of factors.

Proposed § 1.503 is consistent with regulations and guidelines requiring the use of trained individuals to conduct food safety operations. The HACCP guidelines issued by the National Advisory Committee on Microbiological Criteria for Foods (NACMCF) recommend that experts who are knowledgeable in the food process either participate in or verify the completeness of the HACCP plan (Ref. 8). Our HACCP regulations for juice and seafood require that a trained individual be responsible for developing the hazard analysis (juice only), developing the HACCP plan, verifying and modifying the HACCP plan, and performing the record review (§§ 120.13 and 123.10, respectively). These regulations also state that job experience will qualify an individual to perform these functions if the experience has provided knowledge at least equivalent to that provided through a standardized HACCP curriculum recognized as adequate by FDA. The U.S. Department of Agriculture's (USDA's) HACCP regulations for meat and poultry state that only an individual who has completed a training course may conduct certain activities, such as development and modification of the HACCP plan (9 CFR 417.7).

In accordance with the proposed definition of ''qualified individual,'' proposed § 1.503 would mean that an importer would need to employ or obtain or otherwise rely on the services of a person with the necessary education, training, and experience to perform all FSVP activities except those specifically exempted from § 1.503. When these activities involve the review of food safety plans established in accordance with section 418 of the FD&C Act, the qualified individual would need to have training in the principles of hazard analysis and risk-based preventive controls as set forth in section 418.

E. Review of Food and Foreign Supplier Compliance Status (Proposed § 1.504)

Proposed § 1.504 answers the question, ''What review of a food and foreign supplier's compliance status must I conduct?'' We tentatively conclude that a prudent and responsible importer should review readily-available information regarding whether the Agency has identified any compliance problems with the food or the foreign supplier. Therefore, proposed § 1.504 would require an importer, before importing a food from a foreign supplier, to assess the compliance status of the food and the foreign supplier, including whether either is the subject of an FDA warning letter, import alert, or requirement for certification issued under section 801(q) of the FD&C Act (21 U.S.C. 381(q)) relating to the safety of the food, to determine whether it would be appropriate to import the food from the foreign supplier. (As discussed in section II.G.7 of this document, under proposed § 1.506(g), an importer also would be required to consider the food

and supplier's compliance status as assessed under § 1.504 in determining appropriate verification activities.)

FDA warning letters and import alerts are available on the Agency's Web site. Section 801(q) gives FDA the authority to require, as a condition for granting admission into the United States to an article of food, that a certification (or other assurance) that the article complies with applicable requirements of the FD&C Act be provided by either (1) an Agency or a representative of the government of the country from which the article of food originated (as designated by FDA) or (2) a person or entity accredited under section 808 of the FD&C Act to provide such certification or assurance. Other information relevant to the compliance status of a food or foreign supplier, which an importer might obtain from FDA or the foreign supplier, could include FDA Form 483s, Establishment Inspection Reports, recall notices, and documents relating to injunctions or seizures. Proposed § 1.504 also would require an importer to document this review and to continue to monitor and document the compliance status as long as the importer obtains the food from the foreign supplier.

We request comment on what compliance information about a food or foreign supplier an importer should be required to obtain and consider as part of its food/supplier compliance status review. We also request comment on whether this information should include information about a foreign supplier's compliance standing with the food safety authority of the country in which it is located.

F. Hazard Analysis (Proposed § 1.505)

Proposed § 1.505 answers the question, ''What hazard analysis must I conduct?'' As discussed in section I.C of this document, we believe that identification of the hazards that commonly occur with a food is a widely accepted principle of food safety. Incorporating this principle into the proposed FSVP regulations, we tentatively conclude that it is appropriate for importers to identify the hazards that are reasonably likely to occur with the foods they import so that they can conduct verification activities to provide assurance that these hazards are being controlled. We also believe that identification of hazards that are likely to occur will be an effective, risk-based way of focusing importers' verification efforts on ensuring that the appropriate food safety risks have been addressed.

1. Hazard Analysis

Proposed § 1.505(a) would require each importer, except as permitted under proposed § 1.505(d) (discussed in section II.F.4 of this document) and (e) (discussed in section II.F.5 of this document), to determine, for each food imported, the hazards, if any, that are reasonably likely to occur with the food and, for each, the severity of the illness or injury if such a hazard were to occur. Proposed § 1.505(a) further states that the importer must document this determination and use it to determine appropriate verification activities in accordance with proposed § 1.506.

In accordance with Congress's directive to use a risk-based approach to foreign supplier verification, the proposed rule would require that the importer identify only the hazards that are reasonably likely to occur with the foods they import. Careful assessment of known or reasonably foreseeable hazards will ensure that an importer has determined whether they are reasonably likely to occur and, if they are, whether the foreign supplier of the food has the capability to produce the food in a manner that will adequately control such hazards. In turn, the importer's verification activities will focus on ensuring that its foreign supplier has adequately controlled such hazards during the food's production (or, in some cases, that an entity such as the importer, the importer's customer, or the supplier of a raw material to the foreign supplier is controlling the hazard). Because hazard analysis is widely accepted in the industry as a fundamental principle of food safety, we tentatively conclude that it is appropriate to require that importers use this basic approach for FSVPs, unless there are applicable FDA food safety regulations intended to comprehensively address all hazards, or a specific subset of the hazards, relevant to a food (e.g., RACs that are fruits or vegetables). We also are proposing this approach to focus importers' verification efforts on those hazards that are reasonably likely to occur and thus can be addressed through routine verification. We request comment on this proposed approach.

We also tentatively conclude that it is appropriate to require importers to consider the severity of the illness or injury if a hazard determined to be reasonably likely to occur were to in fact occur. As discussed in the Preventive Controls Proposed Rule, the HACCP regulations issued by FDA and the USDA, the NACMCF HACCP guidelines (Ref. 8), and the HACCP annex to the Codex General Principles of Food Hygiene (Codex HACCP Annex) (Ref. 9) all recognize the importance of considering the severity of the effects of a hazard when conducting a hazard analysis for a food.

2. Potential Hazards

Proposed § 1.505(b) states that an importer's evaluation of the hazards that are reasonably likely to occur with each food that is imported must consider the following potential hazards that may occur naturally or may be unintentionally introduced:

- Biological hazards, including microbiological hazards such as parasites and environmental pathogens, and other microorganisms of public health significance;
- Chemical hazards, including substances such as pesticide and drug residues, natural toxins, decomposition, unapproved food or color additives, and food allergens;
- Physical hazards; and
- Radiological hazards.

These hazards are the kinds of contaminants and materials that can lead to adulteration under section 402 of the FD&C Act. The Preventive Controls Proposed Rule includes a discussion of each of these types of hazards and the circumstances under which each can pose a risk to public health (78 FR 3646 at 3734 to 3735). We tentatively conclude that it is also appropriate for food importers to examine these potential hazards as part of their FSVPs (with exceptions discussed elsewhere in this document).

We also tentatively conclude that it is appropriate to require importers to consider only those hazards that occur naturally or may be unintentionally introduced. Intentional hazards raise different issues and concerns. We plan to address the issue of certain intentionally introduced hazards as part of our rulemaking to implement section 106 of FSMA (codified in section 420 of the FD&C Act (21 U.S.C. 350i)), which directs FDA to issue regulations to protect against the intentional adulteration of food, including the establishment of science-based mitigation strategies to prepare and protect the food supply chain at specific vulnerable points. However, we also recognize that some kinds of intentional adulterants could be viewed as reasonably likely to occur, e.g., in foods for which there is a widely recognized risk of economically motivated adulteration in certain circumstances. An example of this kind of hazard is the addition of melamine to certain food products apparently to enhance perceived quality and/or protein content. We request comment on

whether to include potential hazards that may be intentionally introduced for economic reasons. We also request comment on when an economically motivated adulterant can be considered reasonably likely to occur.

3. Hazard Evaluation

Proposed § 1.505(c) states that, in evaluating the hazards in § 1.505(b), the importer must consider the effect of several factors on the safety of the finished food for the intended consumer. These factors, listed in proposed § 1.505(c)(1) through (c)(9), are as follows:

- The ingredients of the food;
- The condition, function, and design of the foreign supplier's establishment and equipment;
- Transportation practices;
- Harvesting, raising, manufacturing, processing, and packing procedures;
- Packaging and labeling activities;
- Storage and distribution;
- Intended or reasonably foreseeable use;
- Sanitation, including employee hygiene; and
- Any other relevant factors.

We tentatively conclude that these are factors that a prudent person who imports food would consider when evaluating hazards to determine those that are reasonably likely to occur with a food. Further information regarding such factors is provided in the Preventive Controls Proposed Rule (78 FR 3646 at 3736 to 3738). We expect that importers (or the qualified individuals assisting them) will obtain information on these factors from FDA guidance, scientific and technical experts, published scientific literature, trade publications, and foreign suppliers of these foods.

Proposed § 1.505(c)(1) would require that the hazard evaluation consider the ingredients of the imported food. Examples of problems that might occur with a product's ingredients include the presence of an undeclared allergen and inadequate roasting of nuts used in a food product.

Proposed § 1.505(c)(2) would require that the hazard evaluation consider the condition, function, and design of the establishment and equipment of the foreign supplier. The condition, function, or design of an establishment or its equipment could potentially result in the introduction of hazards into foods. For example, older equipment (e.g., older slicing, rolling, and conveying equipment) may be more difficult to clean (e.g., with close-fitting components or hollow parts) and, therefore, provide more opportunities for pathogens to become established in a niche environment than modern equipment designed to address the problem of pathogen harborage in such environments. Equipment designed so that there is metal-to-metal contact may generate metal fragments. An establishment that manufactures soft, fresh cheese (such as queso fresco, which is a ready-to-eat product) may have cold, moist conditions that are conducive to the development of a niche where the pathogen *Listeria monocytogenes* can become established and contaminate food-contact surfaces and, eventually, foods. An establishment design that has closely spaced equipment would provide more opportunities for cross-contact of allergens (such as powdered milk or soy) from one line to another (e.g., through dust) than a facility that has more spacing between equipment.

Proposed § 1.505(c)(3) would require that the hazard evaluation consider transportation practices. A food may become unsafe as a result of poor transportation practices. For example, for certain types of food, a supplier may need to take into account the method of transporting the food in developing its preventive controls, such as for food that is temperature sensitive or susceptible to cross-contamination.

Proposed § 1.505(c)(4) would require that the hazard evaluation consider harvesting, raising, manufacturing, processing, and packing procedures. Examples of hazards that could arise during harvesting include contamination with aflatoxin or a pesticide, and the introduction of a physical hazard such as glass during mechanical harvesting. Hazards may arise from manufacturing processes such as cooling or holding of certain foods due to the potential for germination of pathogenic spore-forming bacteria such as *Clostridium perfringens* and *Bacillus cereus* (which may be present in food ingredients) as a cooked product is cooled and reaches a temperature that will allow germination of the spores and outgrowth. Hazards also may arise from manufacturing processes such as acidification due to the potential for germination of spores of *C. botulinum,* with subsequent production of botulinum toxin, if the acidification is not done correctly and the packaging environment otherwise supports *C. botulinum* growth and toxin formation. Toxins can be produced by the bacteria *Staphylococcus aureus* or *B. cereus* in a product that has been heated and held at room temperature during the manufacturing process if the product formulation supports growth of the bacteria and *S. aureus* or *B. cereus* is present in the ingredients of the product. Physical hazards may occur from metal fragments generated during the manufacture of food on equipment in which metal (e.g., wires, saw blades, knives) is used to cut products during manufacturing.

Proposed § 1.505(c)(5) would require that the hazard evaluation consider packaging activities and labeling activities. For example, whether a product is packaged in glass bottles or in plastic bottles could affect what hazards are reasonably likely to occur with the product.

Proposed § 1.505(c)(6) would require that the hazard evaluation consider storage and distribution of a food. For example, biological hazards are more likely to be reasonably likely to occur during storage and distribution in foods that require refrigerated storage to maintain safety than in shelf-stable foods, which are designed for control of biological hazards.

Proposed § 1.505(c)(7) would require that the hazard evaluation consider the intended or reasonably foreseeable use of a food. For example, if the product may either be cooked by the consumer or used in a manner that does not involve cooking, e.g., a soup mix used as a component of a dip, hazards such as *Salmonella* would need to be considered to determine if they are reasonably likely to occur.

Proposed § 1.505(c)(8) would require that the hazard evaluation consider sanitation, including employee hygiene. Sanitation practices can impact the likelihood of a hazard being introduced into a food. For example, inadequate worker health and hygiene can present the potential for transfer of pathogens such as *Salmonella,* hepatitis A, and norovirus.

Proposed § 1.505(c)(9) would require that the hazard evaluation consider any other relevant factors that might potentially affect the safety of the food for the intended consumer. For example, an unexpected natural disaster could flood some or all of a facility, creating insanitary conditions and potentially contaminating the facility with harmful micro-organisms or chemical residues. Following a natural disaster, environmental contaminants that could enter a facility could be hazards that are reasonably likely to occur.

Although proper evaluation of potential hazards under proposed § 1.505(c) requires the consideration of factors that may occur at various points throughout a food's production and distribution chain, an importer's responsibility to conduct verification activities in accordance with proposed

§ 1.506 applies only to the ability of its foreign supplier (as defined in proposed § 1.500) to control (or verify control of) these hazards (unless they are controlled by the importer or the importer's customer). This means that an importer's verification activities would need to provide assurances regarding the actions of its foreign supplier, but the importer would not be required to conduct verification with respect to any other entities either before or after the foreign supplier in the food's production and distribution chain.

4. Review by Qualified Individual of Foreign Supplier's Hazard Analysis

Proposed § 1.505(d) would permit an importer to identify the hazards that are reasonably likely to occur for a particular food by reviewing and evaluating the hazard analysis conducted by the foreign supplier (rather than conducting an entirely separate evaluation of hazards using information that the importer itself has obtained). We tentatively conclude that this approach to hazard analysis would reduce the burden on an importer while still ensuring that the importer has an adequate understanding of the hazards that are reasonably likely to occur with a particular food.

5. Microbiological Hazards in RACs That Are Fruits or Vegetables

As stated in section I.C of this document, the proposed produce safety regulations would not require produce farms to determine the microbiological hazards that are associated with each fruit or vegetable they grow. Instead, FDA has identified the reasonably foreseeable microbiological hazards associated with fruits and vegetables and has proposed requirements for measures intended to prevent the introduction of these hazards into this food and to provide reasonable assurances that the produce is not adulterated due to these hazards. For this reason, we tentatively conclude that it would not be appropriate to require importers of RACs that are fruits or vegetables to determine whether there are any microbiological hazards that are reasonably likely to occur with this food. Therefore, proposed § 1.505(e) states that for a RAC that is a fruit or vegetable, an importer is not required to conduct a hazard analysis regarding the microbiological hazards that might be reasonably likely to occur with this food. Instead, the importer will need to verify that this kind of food is produced in compliance with FDA's produce safety standards or equivalent standards.

However, importers of RACs that are fruits or vegetables would still be required to conduct a hazard analysis regarding all non-microbiological hazards that might be associated with the food (i.e., chemical, physical, and radiological hazards). In the case of these kinds of hazards, we anticipate that hazard analysis will not be complicated; it should consist of being aware of how the crop is produced and whether there have been non-microbiological problems associated with the crop or the producer in the past. For example, if an importer is purchasing cucumbers from a country, region, or grower with a history of pesticide residue violations for that food, we would expect the importer to address this potential adulteration. Conversely, if the cucumbers come from a country or region with no history of pesticide residue violations, we would not expect an importer to identify unsafe pesticide residues as a hazard that is reasonably likely to occur, unless new information came to light or questions about the use of pesticides or control of pesticide residues indicated an issue. We anticipate that, in addition to requesting information from foreign suppliers, importers would use public information, such as that available on FDA's Web site from FDA guidance, import alerts, warning letters, and untitled letters, to decide if a hazard was reasonably likely to occur. As we have explained, this assessment is intended to allow importers to focus on those hazards that are likely and thus can be addressed through routine verification.

G. Foreign Supplier Verification and Related Activities (Proposed § 1.506)

Proposed § 1.506 answers the question, ''What foreign supplier verification and related activities must I conduct?'' Requiring importers to conduct foreign supplier verification activities is the core component of the import safety responsibilities assigned to importers under section 301 of FSMA. Verification of foreign suppliers also is consistent with the principles of verification of suppliers of raw materials and ingredients discussed in the Preventive Controls Proposed Rule (78 FR 3646 at 3765 to 3767), as well as consistent with the intent of the requirements applicable to importers of juice and seafood products under parts 120 and 123.

1. List of Foreign Suppliers

To help ensure that importers are obtaining food only from appropriate foreign suppliers, proposed § 1.506(a) would require each importer to maintain a written list of the foreign suppliers from which they are importing food. The list would also help importers to quickly and accurately identify their foreign suppliers for purposes of conducting FSVP activities such as supplier verification, investigations, and corrective actions, and help ensure consistent performance of these activities by importers' employees or other qualified individuals. The list also would assist us in monitoring importers' compliance with the FSVP requirements. We request comment on how the foreign suppliers should be identified in this list to ensure that the information is accurate and not ambiguous to the importer or FDA (e.g., identified by the foreign supplier's name and address, by their name and DUNS number, or by some other means). We would have access to this information upon request under proposed § 1.510(b). Nonetheless, we also request comment on whether the identity of the foreign supplier of the food should also be provided when the food is offered for import, along with the importer information that must be provided under proposed § 1.509(c), and, if so, how the foreign supplier should be identified to ensure that the information is accurate and not ambiguous. Under the prior notice requirements, for each line entry of imported food, we receive the identity of the foreign manufacturer/processor and, if known, the grower (see 21 CFR 1.281). Therefore, any such comments should address how the identity of the foreign supplier could be used in conjunction with the prior notice and other relevant information we currently receive about foreign suppliers.

2. Foreign Supplier Verification Procedures

Proposed § 1.506(b) would require that importers establish and follow adequate written procedures for conducting foreign supplier verification activities with respect to the foods they import. These procedures will state how the importer will comply with § 1.506, including documenting when the importer itself controls hazards under § 1.506(e), documenting customer control of hazards under § 1.506(f), and conducting appropriate foreign supplier verification activities in accordance with § 1.506(g) and (h). We tentatively conclude that establishing and following written procedures on how these activities will be conducted will help ensure that importers properly and consistently verify that the hazards associated with the foods they import are adequately controlled, and will allow us to more effectively monitor

compliance with section 805 of the FD&C Act.

3. Purpose of Supplier Verification

As stated in section II.F.1 of this document, the proposed rule would require importers (with some exceptions) to conduct hazard analyses as part of their FSVPs. To provide assurances of adequate control of hazards reasonably likely to occur, proposed § 1.506(c) would require the importer to conduct activities to verify that such hazards are adequately controlled. The approach of identifying hazards that are reasonably likely to occur and verifying that they are being adequately controlled is sufficiently general and flexible to apply to a variety of circumstances. We tentatively conclude, however, that it would not be appropriate to apply the supplier verification requirement in proposed § 1.506(c)—i.e., that verification activities provide adequate assurances that the hazards identified by the importer have been adequately controlled—to microbiological hazards in RACs that are fruits or vegetables and that would be subject to the produce safety regulations in proposed part 112. This is because, under proposed § 1.505(e), importers of these fruits or vegetables would not be required to conduct a hazard analysis regarding the microbiological hazards for this food. Instead, as discussed below in section II.G.8 of this document, verification for these hazards should address whether foreign suppliers are producing these fruits and vegetables in accordance with the produce safety regulations. Consequently, proposed § 1.506(c) states that supplier verification activities must provide assurances that hazards identified as reasonably likely to occur are adequately controlled ''[e]xcept with respect to verification activities specified in [proposed § 1.506(h)] regarding raw agricultural commodities that are fruits or vegetables that are subject to [part 112].'' This exception regarding the purpose of supplier assurances would apply only to microbiological hazards for RACs that are fruits or vegetables and that are subject to the proposed produce safety regulations; such RACs that are not subject to those regulations (e.g., fruits and vegetables that are rarely consumed raw or that receive commercial processing that adequately reduces the presence of microorganisms of public health significance) are regarded as having no microbiological hazards with respect to which supplier verification would be warranted.

4. No Hazards Identified

With some foods, an importer might conduct a hazard analysis and conclude that there are no hazards that are reasonably likely to occur. Examples of foods with respect to which it is possible that, depending on the circumstances, no hazards would be reasonably likely to occur are salt and food-grade chemicals such as citric acid. In the forthcoming draft guidance on FSVPs, we intend to provide other examples of foods for which it is possible that no hazard would be reasonably likely to occur. We tentatively conclude that when an importer has determined that no hazards are reasonably likely to occur with a particular food, there would be no public health reason to require the importer to conduct most of the activities under § 1.506. Therefore, proposed § 1.506(d) states that if an importer conducts a hazard analysis in accordance with § 1.505 and determines that there are no hazards that are reasonably likely to occur with a food, the only requirement in § 1.506 with which the importer must comply with respect to that food is to maintain a list of its suppliers of this food in accordance with § 1.506(a). However, if an importer determined that there were no hazards in a food, the importer would need to reassess this determination at least every 3 years in accordance with proposed § 1.508.

Proposed § 1.506(d) also states that this provision regarding an absence of hazards would not apply if the food is a RAC that is a fruit or vegetable and that would be subject to the produce safety regulations. This exception is appropriate because for such food the importer is not conducting a hazard analysis to identify the microbiological hazards that are reasonably likely to occur in the food. The importer would still need to conduct verification activities with respect to microbiological hazards in accordance with proposed § 1.506(h), discussed in section II.G.8 of this document.

5. Hazards Controlled by the Importer

Certain hazards associated with an imported food might be controlled through actions that the importer takes after the food is brought into the United States. Proposed § 1.506(e) states that for a hazard that the importer has identified as reasonably likely to occur with a food that the importer itself will control, the importer must document, at least annually, that it has established and is following procedures that adequately control the hazard. If the importer of a food has established validated preventive controls to ensure that a hazard is adequately controlled, there would be no need for the importer to conduct a foreign supplier verification activity with respect to that hazard. For example, a domestic food facility might import raw peanuts for use as an ingredient in its products. If this importer identifies *Salmonella* as a hazard reasonably likely to occur in the peanuts, the importer would not need to conduct a verification activity with respect to the *Salmonella* hazard in the peanuts if the importer itself treats the peanuts using a process validated to adequately reduce *Salmonella.* Because, in the context of hazards controlled by an importer, process controls such as these generally are designed for the control of microbiological hazards, proposed § 1.506(e) likely would not apply to chemical hazards (such as pesticides, mycotoxins, and drug residues) or radiological hazards (such as iodine-131), although this would not necessarily always be the case.

We request comment on this proposal to require importers that control the hazards in food they import to document their control of these hazards, including on the frequency with which importers should be required to document this control.

As discussed in section II.C of this document, we are requesting comment on whether it would be appropriate to deem importers who are in compliance with any applicable supplier verification provisions that are included in the preventive controls regulations to be in compliance with the FSVP requirements, to avoid duplicative regulation of importers who are also food facilities that are required to register. We tentatively conclude that, if a provision to this effect were included in the FSVP regulations in accordance with the inclusion of any supplier verification provisions in the preventive controls regulations, proposed § 1.506(e) would be unnecessary, as importers that control hazards in foods they import would be subject to the supplier verification provisions in the preventive controls regulations. We request comment on this proposed approach to provisions on importers who control the hazards in the food they import.

Imported food that is, or appears to be, adulterated, misbranded, or manufactured, processed, or packed under insanitary conditions is subject to refusal of admission under section 801(a) of the FD&C Act. If the importer is importing food that has a hazard that is reasonably likely to occur and that has not yet been controlled (because the hazard is intended to be controlled by the importer or, as discussed in section

II.G.6 of this document, by its customer), such food may be subject to refusal of admission. We request comment regarding the importation of such products and what process should be required to help ensure that food that is subject to refusal of admission is not distributed without the hazard being adequately controlled.

6. Hazards Controlled by the Importer's Customer

Some hazards associated with imported foods are controlled through procedures implemented by the importer's U.S. customer, i.e., a business that purchases the imported food for further processing or distribution. For example, imported macadamia nuts might be used as an ingredient in cookies made by a bakery operation, or imported mushrooms might be an ingredient of domestically produced canned soup. Proposed § 1.506(f) states that for a hazard that an importer has identified as reasonably likely to occur with a food that the importer's customer adequately controls, the importer must verify that its customer controls the hazard by obtaining written assurance, at least annually, from the customer that it has established and is following procedures (identified in the written assurance) that adequately control the hazard. The written assurance would need to briefly state the procedures that the customer has put in place to control the hazard and affirm that these procedures are in fact controlling the hazard.

We invite comment on how frequently an importer should be required to obtain written assurance from its customer that the customer is following procedures to adequately control the hazard. For example, we request comment on whether the importer should be required to obtain this assurance the sooner of every 3 years or whenever there is a change in the customer's control procedures (consistent with the standard for reassessment of the importer's FSVP under proposed § 1.507(a)), or whether the importer should be required to obtain the assurance more frequently. As noted above, this food may be subject to refusal of admission when it is imported. Therefore, we request comment regarding the importation of such products and what process should be required to help ensure that food that is subject to refusal of admission is not distributed without the hazard being adequately controlled.

As with hazards to be controlled by an importer, we tentatively conclude that proposed § 1.506(f) would be unnecessary if the FSVP regulations were to include a provision stating that an importer whose customer was in compliance with any adopted preventive controls supplier verification provisions is deemed to be in compliance with the FSVP requirements. We request comment on this proposed approach to provisions on importers whose customers control hazards in the food they import.

7. Hazards Controlled or Verified by the Foreign Supplier

Proposed § 1.506(g) addresses foods with hazards that are controlled by, or for which control is verified by, the importer's foreign supplier. Requiring importers to conduct supplier verification with respect to these hazards will help to ensure, consistent with section 805(c)(2)(A) of the FD&C Act, that the foreign supplier is following processes and procedures that will provide the same level of public health protection as those required under section 418 or 419 of the FD&C Act (if either is applicable) and is otherwise producing food that is not adulterated under section 402 or misbranded under section 403(w) of the FD&C Act. We tentatively conclude that requiring such verification is consistent with the principles of food safety underlying current industry practice with respect to the verification of the safety of imported food and food ingredients obtained from suppliers, as well as the principles behind the importer requirements in the juice and seafood HACCP regulations.

We are co-proposing two options for the requirements regarding supplier verification activities for hazards that are controlled, or for which control is verified, by the importer's foreign supplier. Option 1 of the co-proposal would establish certain requirements for SAHCODHA hazards to be controlled by the foreign supplier and different requirements for non-SAHCODHA hazards and SAHCODHA hazards that the foreign supplier verifies have been controlled by its raw material or ingredient supplier. Option 2 of the co-proposal would require the importer to determine the supplier verification activity it would use for all hazards that the foreign supplier controls or for which it verifies control. We are proposing alternative codified provisions to facilitate consideration of, and comment on, these two different approaches to supplier verification.

a. *Option 1: Different approaches for SAHCODHA hazards controlled by the foreign supplier and other hazards.*

Option 1 of the co-proposal would establish mandatory onsite auditing requirements for SAHCODHA hazards to be controlled by the foreign supplier, while for non-SAHCODHA hazards and all hazards that a foreign supplier verifies have been controlled by its raw material or ingredient supplier, the importer would choose from among certain specified verification activities, as discussed below.

i. *SAHCODHA hazards to be controlled by the foreign supplier.*

Under Option 1, proposed § 1.506(g)(1) sets forth the required verification activities for hazards that are to be controlled by the foreign supplier at its establishment when the hazard is one for which there is a reasonable probability that exposure to the hazard will result in serious adverse health consequences or death to humans or animals. These SAHCODHA hazards are those for which a recall of a violative product posing such a hazard is designated as ''Class 1'' under 21 CFR 7.3(m)(1). Proposed § 1.506(g)(1) states that for a SAHCODHA hazard that is to be controlled at the foreign supplier's establishment, the importer must conduct and document certain onsite audits specified in § 1.506(g)(1)(i) and (ii) for the hazard.

Examples of hazards that, in some circumstances, historically have resulted in serious adverse health consequences or death to humans or animals include pathogens or their toxins in ready-to-eat food. Under Option 1's § 1.506(g)(1), if such hazards are identified by the importer as hazards reasonably likely to occur in foods they receive from a foreign supplier, and the foreign supplier is to apply preventive controls to address those hazards, then onsite auditing of the foreign supplier must be conducted to verify that those controls have been properly applied. For example, if *Salmonella,* exposure to which creates a reasonable probability of serious adverse health consequences or death to humans or animals, is identified as a hazard reasonably likely to occur with peanuts and the foreign supplier applies a process control, e.g., oil roasting, onsite auditing must be conducted to verify that the supplier's roasting process is adequately controlling the *Salmonella.*

Onsite verification is widely acknowledged in the food industry as an important component of an effective food safety management system. For example, the Grocery Manufacturers Association's (GMA's) Food Supply Chain Handbook (GMA Handbook) (Ref. 10) states that many food importers elect to audit a foreign supplier using an employee of the company (''second-party auditing'') or a qualified third-party auditing firm (independent auditor). In addition, onsite auditing is

a major component of effective food safety schemes described in the Global Food Safety Initiative (GFSI) Guidance Document (Ref. 11).

We also believe that onsite auditing of a foreign supplier is a very effective way of verifying that the supplier understands the SAHCODHA hazard that must be addressed and has implemented appropriate controls. Through an audit conducted onsite, the auditor can observe physical conditions, interview employees, and review records to verify that preventive controls are being implemented and, if there is a written plan for controlling the hazard, that the controls are being implemented according to that plan.

We believe that, for some SAHCODHA hazards in certain situations, conducting onsite auditing alone may not be sufficient to ensure that the hazard is adequately controlled. For example, an importer who was required by Option 1's § 1.506(g)(1) to perform an onsite audit of its foreign supplier of semi-soft cheese might become aware that such cheese from that supplier's country frequently does not meet FDA's standard for the presence of *L. monocytogenes.* Under these circumstances, performance of annual onsite audits would not, by itself, provide sufficient assurance that the *L. monocytogenes* hazard has been adequately controlled; periodic sampling and testing of the cheese for the pathogen also would be needed. Similarly, an importer of acidified peppers receiving product from a foreign supplier that had experienced compliance problems because of inadequate pH controls, but that had instituted corrections to address the problem, should conclude that an annual audit to verify the adequacy of the pH controls would not provide sufficient assurances that the compliance problems did not reoccur, and that periodic pH testing of the peppers would be appropriate until confidence in the supplier has been restored. Therefore, proposed § 1.506(g)(1) under Option 1 would require that, when onsite auditing alone cannot provide adequate assurances that such a hazard is adequately controlled, the importer must conduct one or more additional verification activities to provide such assurances.

- *Initial onsite audit.* For SAHCODHA hazards under Option 1's § 1.506(g)(1), foreign supplier verification would require an initial onsite audit and subsequent periodic onsite audits. Proposed § 1.506(g)(1)(i) would require the importer to conduct (and document) or obtain documentation of an onsite audit before importing the food from the foreign supplier. The importer would use the results from the initial audit in determining whether any changes were warranted before obtaining food from this foreign supplier.

The importer could either conduct the onsite audit itself (if it has a qualified individual on staff), engage the services of a qualified individual who would conduct the audit, or obtain a certification or other documentation of an audit of the foreign supplier conducted by a qualified individual, including an audit conducted by a third-party auditor at the request of the foreign supplier or by an auditor working for a foreign government. We note that others have adopted a similar approach. As previously stated, the GMA Handbook (Ref. 10) acknowledges that many customers audit a supplier themselves or use a qualified third-party auditor. The NACMCF HACCP guidelines (Ref. 8) recommend that a periodic comprehensive verification of the HACCP system be conducted by an unbiased, independent authority.

It is widely recommended that persons conducting onsite audits have technical expertise in auditing. The NACMCF HACCP guidelines (Ref. 8) acknowledge that it is important that individuals performing verification have appropriate technical expertise to perform this function. GMA recommends that an auditor's competency include education/experience, advanced HACCP training, and a minimum amount of auditing expertise (Ref. 10). The GFSI Guidance Document states that an auditor's qualifications should include the following: Minimum full-time work experience in food or an associated industry; formal training in auditing techniques; initial training for each product category with which the auditor will be working; audit experience; and continuous professional development (Ref. 11).

We recognize that Option 1's proposed requirement to conduct or obtain documentation of onsite audits of foreign suppliers with respect to SAHCODHA hazards would be one of the most significant of the FSVP requirements. Many in the food industry already rely on third-party auditors to accomplish verification of food safety controls and we expect that they will continue to do so. However, we also recognize that currently there is considerable variance in the quality of auditing services and the nature of audit criteria.

Along with industry's ongoing efforts to incorporate onsite auditing into food safety operations, we anticipate that our adoption of final preventive controls and produce safety regulations will improve auditing consistency by providing clear, uniform criteria against which suppliers' processes and controls can be assessed and audited. This greater consistency in auditing should make it easier for suppliers to demonstrate their products' safety to multiple customers through a single audit, resulting in a more efficient auditing system.

We believe that this movement toward a more effective and efficient food safety auditing system will be further enhanced by FDA's adoption of regulations on the accreditation of third-party auditors. As previously stated, section 307 of FSMA (adding section 808 of the FD&C Act) requires FDA to establish a third-party accreditation system and develop model accreditation standards that will help ensure that these third parties provide high-quality auditing services. While neither the proposed FSVP regulations nor the proposed preventive controls regulations would require use of accredited third-party auditors, we expect that adoption of these regulations will increase the demand for such services. Proposed § 1.500 states that a third-party auditor accredited in accordance with section 808 of the FD&C Act would be a ''qualified individual'' for purposes of the FSVP regulations. Thus, although use of accredited auditors would not be required, once FDA's third-party accreditation system is in place, we expect that many importers will request that their suppliers obtain an accredited third-party audit that meets the requirements under section 808. Rather than have each importer and processor request individual audits of their suppliers, we anticipate that the system ultimately will evolve into one in which the foreign supplier obtains an audit by an accredited third party that will be acceptable to, and used by, most of its customers. By minimizing the number of onsite audits conducted at each foreign supplier facility, this system will more efficiently leverage the resources of importers, processors, and suppliers. The proposed FSVP regulations are designed to permit this systematic use of accredited third parties.

Regarding an importer's obligation under Option 1's section § 1.506(g)(1) to conduct or obtain documentation of an onsite audit of its foreign supplier, we request comment on whether it would be appropriate to allow an importer to rely on an audit conducted in accordance with section 801(q) of the FD&C Act as fulfillment of this obligation. Section 303(b) of FSMA

gives FDA the authority, in section 801(q) of the FD&C Act, to require, as a condition of granting admission to an article of food imported or offered for import into the United States, that a certification or other assurance (e.g., shipment-specific certificate, listing of certified facilities) be obtained stating that a food that FDA has identified as high risk, in accordance with that provision, complies with the requirements of the FD&C Act. Such certificates or other assurances would have to be obtained from an Agency or representative of the government of the country from which the food originated, as designated by FDA, or from a third-party auditor accredited under section 808 of the FD&C Act. In deciding whether to require such certification or other assurance, FDA would consider, among other factors, known safety risks associated with the food and with the country, territory, or region of origin of the food. We request comment on whether, if FDA required certification of a food under section 801(q), an importer should be permitted to rely on the results of the audit that led to issuance of the section 801(q) certification to meet the requirement to conduct or obtain the results of an onsite audit under proposed § 1.506(g)(1). If you believe that an importer should be permitted to rely on the results of the audit that led to issuance of the section 801(q) certification, we request comment on the circumstances and conditions under which this would be appropriate.

We also request comment on whether an importer should be permitted to meet its onsite auditing requirements under the FSVP regulations by relying on the results of an audit conducted to obtain facility certification required for participation in the voluntary qualified importer program (VQIP), which Congress directed FDA to establish in section 302 of FSMA (codified in section 806 of the FD&C Act (21 U.S.C. 384b)). As with audits for section 801(q) certification, we request comment on the particular circumstances and conditions under which reliance on audits conducted for facility certification under VQIP would be appropriate for meeting FSVP requirements.

• *Subsequent periodic onsite audits.* For ongoing verification with respect to SAHCODHA hazards controlled by a foreign supplier of a food, Option 1's proposed § 1.506(g)(1)(ii) would require the importer to conduct (and document) or obtain documentation of an onsite audit of the foreign supplier at least annually, unless more frequent onsite audits were necessary to adequately verify adequate control of the hazard. We tentatively conclude that conducting audits annually for SAHCODHA hazards is often adequate for verifying that these hazards are appropriately controlled. The requirement for annual onsite audits is consistent with the recommendations on the frequency of third-party auditing issued by the GFSI (Ref. 11), although GFSI recommends annual auditing regardless of the potential severity of the hazard. However, if more frequent onsite audits were necessary to verify adequate control of the hazard, the importer would be required to conduct or obtain documentation of audits more frequently. GFSI states that the frequency of audits may be influenced by a number of factors, such as previous audit history, concerns about compliance with an audit scheme's standard, and changes in product technology (Ref. 11). We request comment on the proposed annual onsite audit frequency as well as comment on what criteria, if any, should be specified for determining whether more frequent audits are appropriate. We are aware that there are circumstances in which suppliers are audited multiple times each year due to multiple customer requests (in addition to, in some cases, the company's internal audit). It is not our intent to increase the number of audits of each foreign supplier; rather, we anticipate there will be consolidation of audits. We request comment on this approach.

ii. *Supplier verification activities for other hazards under Option 1.*

Option 1's proposed § 1.506(g)(2) sets forth the foreign supplier verification requirements for hazards not specified in proposed § 1.506(g)(1), i.e., non-SAHCODHA hazards to be controlled by the foreign supplier of a food and any hazard which the foreign supplier verifies has been controlled by its supplier.

We tentatively conclude that onsite auditing is not necessarily warranted to verify adequate control of a non-SAHCODHA hazard. Examples of hazards that historically have not resulted in serious adverse health consequences or death to humans or animals include drug residues and some foreign objects. We tentatively conclude that a verification activity other than onsite auditing may be adequate for such hazards.

Also included in the hazards subject to Option 1's proposed § 1.506(g)(2) are hazards for which a foreign supplier, upon receipt of an ingredient from another entity, takes steps to verify that the hazards have been adequately controlled before the foreign supplier processes the received ingredient. For example, an importer might identify *Salmonella* as a hazard reasonably likely to occur in a seasoning mix made by blending milk powder and spices. The foreign supplier of the seasoning mix does not apply a control for *Salmonella* in its blending operation but instead conducts verification to ensure that the suppliers of milk powder and spice have used proper controls. Another example is when a foreign supplier conducts testing to verify that its raw material supplier has applied a procedure that removes a hazard posed by the potential presence of a pesticide in the raw material. For such hazards, a foreign supplier is not applying a process control during the manufacturing/processing of a raw material or ingredient to adequately reduce the hazard but is instead relying on testing the incoming raw material or ingredient or conducting some other activity to verify that the hazard is appropriately controlled by its supplier, thereby making in-plant audits of conditions and practices less important.

To address these types of hazards and any others not subject to Option 1's proposed § 1.506(g)(1), Option 1's proposed § 1.506(g)(2) would require that the importer conduct one or more of the verification activities specified in proposed § 1.506(g)(2)(i) through (g)(2)(iv) before using or distributing the food and periodically thereafter as specified for the relevant activity. Proposed § 1.506(g)(2) also would require that the importer determine and document the frequency with which the activity or activities must be conducted. Finally, proposed § 1.506(g)(2) states that, in determining the appropriate verification activities and how frequently they should be conducted, the importer must consider the risk presented by the hazard and the food and foreign supplier's compliance status as reviewed under § 1.504.

As set forth in Option 1's proposed § 1.506(g)(2)(i) through (g)(2)(iv), the foreign supplier verification activities that importers may choose to conduct, if they are appropriate for the hazard, are as follows:

• Periodic onsite auditing.
• Periodic or lot-by-lot sampling and testing of the food.
• Periodic review of the foreign supplier's food safety records.
• Any other procedure established to be appropriate.

These verification procedures, and examples of types of foods/hazards for which they may be appropriate, are discussed below.

• *Periodic onsite auditing.* Under Option 1's proposed § 1.506(g)(2)(i), an

importer could choose to conduct or obtain documentation of an onsite audit of its foreign supplier to verify control of a hazard subject to § 1.506(g)(2). Using the example provided above involving imported seasoning mix, the importer might choose to conduct an audit or use a third-party auditor to conduct an audit of the foreign supplier's receiving and blending operations to verify that the foreign supplier tests incoming lots of powdered milk and spices to verify that they have been controlled for *Salmonella*.

Because the frequency of onsite auditing must be risk-based under § 1.506(g)(2), the frequency of audits may be affected by factors such as previous audit history, compliance history, seasonality of the product, significant capacity increases, structural changes, and changes in product technology. For example, audits might be conducted annually until a positive compliance history is developed with the foreign supplier.

• *Periodic or lot-by-lot sampling and testing of the food.* Under Option 1's proposed § 1.506(g)(2)(ii), an importer could determine that it is appropriate to conduct and document periodic or lot-by-lot sampling and testing of an imported food before the importer uses or distributes the food. For example, an importer of the above-described seasoning mix might conduct its own periodic *Salmonella* testing or use a contracted laboratory to test samples of seasoning mix on a monthly basis. This monthly testing could be conducted until a good history is established for the seasoning mix supplier, after which time the importer might determine it would be appropriate to test less frequently, such as quarterly.

Alternatively, an importer could choose to obtain documentation (such as a certificate of analysis (COA)) of lot-by-lot or periodic testing of the food that is conducted before the food is distributed by the foreign supplier. This supplier verification method is consistent with the recommendation in the GMA Handbook that customers ask suppliers to provide COAs documenting that major analytical parameters for the specific foods, or lots, contained in a specific shipment have been met (Ref. 10). GMA also recommends the use of recognized analytical methods and statistically valid sampling plans, as well as, in some cases, approval of the use of outside laboratories.

Although requirements for a COA or other documentation of testing will depend on factors such as the food involved, information included in a COA might include the following: A full description of the food; the name of the supplier; lot number(s) for products in the shipment; the date of production; whether the testing was done in-house or by an outside laboratory; the date the food was shipped; the quantity of product covered by the COA (e.g., 40 cases at 70 pounds each); results of chemical, physical, microbiological, or other analyses; methods of analysis; descriptions of sampling plans used to generate results contained in the COA; and the signature of the person issuing the certificate (Ref. 9). To ensure the accuracy and validity of testing, importers should verify that the testing has been performed using proper techniques.

As with the other verification activities, Option 1's proposed § 1.506(g)(2) would require that the frequency of supplier testing be based on the risk presented by the hazard in the food. For example, an importer might initially ask its new foreign supplier of roasted peanuts and tree nuts to provide lot-by-lot COAs for aflatoxin in accordance with a designated sample size and method. The importer might base its decision on the need for lot-by-lot certification on the following factors: The lack of a performance history for the new foreign supplier; the fact that the country in which the supplier is located has a history of aflatoxin occurrence; and the fact that the foreign supplier does not apply a preventive control for aflatoxin in its roasting facility. Until a performance baseline is established with the foreign supplier, the importer might even conduct its own periodic sampling and testing in addition to reviewing the COAs from the foreign supplier. Once the foreign supplier has established a history of no aflatoxin in the roasted peanuts and tree nuts, the importer might be assured that it is appropriate to have the foreign supplier provide COAs at some lesser frequency, such as every tenth delivery.

Although we would expect that sampling and testing of food under Option 1's § 1.506(g)(2)(ii) would be conducted in accordance with any applicable regulations or widely accepted industry standards, because of the diversity of hazards and foods that could potentially be tested, we tentatively conclude that it is not appropriate to specify standards of testing in the regulation. However, we request comment on whether the regulation should specify testing standards and, if so, what those standards should be.

• *Periodic review of the foreign supplier's food safety records.* Under Option 1's proposed § 1.506(g)(2)(iii), an importer could choose to periodically review (and document) or obtain documentation of a review of a foreign supplier's food safety records. Food safety records are records documenting that the food safety procedures that the supplier has established to control hazards reasonably likely to occur are being followed and are adequately controlling the hazards. Such records might include records of a foreign supplier's audit of its supplier's hazard control activities or records of environmental monitoring or product testing. Record review might be an appropriate verification activity when, for example, a foreign supplier of venison performs onsite audits of the deer farms that supply the venison to verify that the farms are not using unapproved drugs. The foreign supplier of venison could provide the importer with copies of the reports of these audits.

• *Other appropriate verification procedure.* Under Option 1's proposed § 1.506(g)(2)(iv), an importer could choose to follow any other procedure that it has established and documented as being appropriate, based on the risk associated with the hazard, for verifying that a foreign supplier is adequately controlling (or verifying control of) the hazard. We tentatively conclude that it is appropriate to allow an importer to use any other procedure that it can develop, as long as the importer can document that the procedure can effectively verify whether a foreign supplier is adequately controlling a hazard. We are aware that importers currently use onsite audits, product testing, and record review to verify the safety of the food they import; we request comment on other foreign supplier verification methods that may be appropriate.

As stated in section I.A of this document, section 805(c)(4) of the FD&C Act states that verification activities under an FSVP may include monitoring records for shipment, lot-by-lot certification of compliance, annual onsite inspections, checking the hazard analysis and risk-based preventive control plans of foreign suppliers, and periodically testing and sampling shipments of imported products. The potential methods for foreign supplier verification specified in Option 1's proposed § 1.506(g)(2) include each of the verification activities stated in section 805(c)(4) (we tentatively conclude that, by ''monitoring records for shipment,'' Congress meant review of the foreign supplier's food safety records).

b. *Option 2: Same approach for all hazards.*

Although we are aware that it is an industry best practice to conduct onsite audits to verify supplier control of SAHCODHA hazards and that audits are an effective and efficient means of verification, we are co-proposing an alternative approach to verification that is similar to the approach described above for non-SAHCODHA hazards. Option 2 of the co-proposal for supplier verification activities would require the importer to choose whatever verification activity would enable the importer to adequately verify that a hazard has been adequately controlled, whether it is a SAHCODHA hazard or a non-SAHCODHA hazard.

Under Option 2 for supplier verification activities, proposed § 1.506(g)(1) would require, for any hazard that the importer has identified as reasonably likely to occur with a food that is to be controlled by the foreign supplier or for which the foreign supplier verifies control by its supplier, that the importer conduct one or more of the verification activities listed in § 1.506(g)(1)(i) through (g)(1)(iv) before using or distributing the food and periodically thereafter. Proposed § 1.506(g)(1) also would require the importer to determine and document which verification activity or activities are appropriate to adequately verify that the hazard is adequately controlled, as well as to determine and document how frequently the verification activities must be conducted. In addition, Option 2's proposed § 1.506(g)(1) would require the importer, in determining the appropriate verification activities and how frequently they should be conducted, to consider the risk presented by the hazard, the probability that exposure to the hazard will result in serious adverse health consequences or death to humans or animals, and the food and foreign supplier's compliance status as reviewed under § 1.504.

As set forth in Option 2's proposed § 1.506(g)(2)(i) through (g)(2)(iv), the foreign supplier verification activities that importers may choose to conduct, if they are appropriate for the hazard, are as follows:

- *Periodic onsite auditing:* The importer would conduct (and document) or obtain documentation of a periodic onsite audit of its foreign supplier.
- *Periodic or lot-by-lot sampling and testing of the food:* The importer would conduct (and document) or obtain documentation (such as a COA containing the results of the testing) from its foreign supplier of lot-by-lot or periodic sampling and testing of the food for the hazard.
- *Periodic review of the foreign supplier's food safety records:* The importer would periodically review (and document) or obtain documentation of a review of its foreign supplier's food safety records (such as records of the foreign supplier's audit of its supplier's hazard control activities).
- *Other appropriate procedure:* The importer would use any other procedure that it had established as being appropriate based on the risk associated with the hazard, and the importer would document its use of any such procedure.

As stated, Option 2 would require importers to consider certain factors in determining which verification activity or activities are appropriate and how frequently they must be conducted. First, the importer would need to consider the risk presented by the hazard and what activity could provide adequate verification of hazard control given the nature of this risk. In making this assessment, an importer would need to consider which verification activities might be needed to adequately assess the foreign supplier's operations to determine if the supplier is adequately and consistently applying its hazard controls (or verifying the controls applied by its raw material or ingredient suppliers). For example, product testing may not, by itself, provide adequate verification when a hazard is not likely to be uniformly distributed or present in a food, e.g., pathogens in untreated spices.

Second, the importer would need to consider the probability that exposure to the hazard will result in serious adverse health consequences or death to humans or animals. Generally, we believe that conducting onsite auditing would provide adequate assurance of SAHCODHA hazard control. We request comment on whether there are circumstances under which other mechanisms might be effective and, if so, what these circumstances might be.

Third, the importer would need to consider the food and foreign supplier's compliance status as reviewed under § 1.504. For example, review of the supplier's food safety records might not provide adequate assurance of supplier compliance with applicable food safety regulations if the supplier had recently been found to be non-compliant with significant requirements.

Section II.G.7.a of this document, which addresses the use of different verification activities for non-SAHCODHA hazards (and hazards to be controlled by the supplier to the foreign supplier) under Option 1 of the co-proposal, offers further examples of circumstances in which particular verification activities might be appropriate under Option 2 of the co-proposal.

We request comment on Options 1 and 2 of the co-proposal regarding supplier verification activities. One advantage of Option 1 is that it would establish a clear verification requirement, i.e., onsite auditing, for the most serious hazards that are controlled during supplier processing, circumstances in which other verification methods (such as records review) might not provide adequate assurance that the foreign supplier has implemented appropriate controls. On the other hand, if verification mechanisms other than onsite auditing could provide adequate assurance of control of serious hazards, Option 2 would give importers somewhat greater flexibility in selecting effective verification activities without adversely affecting food safety. If you recommend either Option 1 or Option 2 concerning verification requirements, provide your rationale and examples of the use of particular supplier verification activities for particular types of hazards that support your preferred approach.

Regardless of the particular requirements for supplier verification activity that we adopt in the final rule, as stated in section I.B.2 of this document, we intend to align these provisions with any supplier verification provisions in the final rule on preventive controls.

c. *Requirements of onsite auditing.* Proposed § 1.506(g)(3) (under Option 1; this is § 1.506(g)(2) under Option 2) sets forth the basic requirements for an onsite audit conducted under § 1.506(g) or (h) (the latter of which concerns auditing related to microbiological hazards in certain RACs). We tentatively conclude that, to provide adequate assurance that the hazard reasonably likely to occur with the food is adequately controlled, the onsite audit must:

- Consider any relevant FDA food safety regulations, such as those on preventive controls, produce safety, acidified foods (part 114 (21 CFR part 114)), shell eggs (part 118 (21 CFR part 118)), and bottled drinking water (part 129 (21 CFR part 129)), and
- Include a review of the foreign supplier's written food safety plan, if any, for the hazard being audited and the supplier's implementation of such plan.

Because different foods are subject to different food safety regulations, we believe it is appropriate that an onsite audit of the foreign supplier of a food should include consideration of the standards and requirements of the

applicable FDA food safety regulations to which the supplier is subject in assessing whether the supplier is adequately controlling the hazard. Because these regulations vary in scope and detail, the parameters and key components of an onsite audit conducted under § 1.506(g) or (h) would necessarily vary depending on what regulations applied to the foreign supplier.

We also tentatively conclude that review of the foreign supplier's written food safety plan, if any, and the supplier's implementation of such plan should be a required part of an effective onsite audit. If the supplier is required by section 418 of the FD&C Act to have a food safety plan, the onsite audit would focus on that plan and assess the implementation of the preventive controls applied by the supplier to address the hazards that the importer has identified as reasonably likely to occur. Preventive controls might include process controls, food allergen controls, sanitation controls, and other controls for biological, chemical, physical, or radiological hazards identified as reasonably likely to occur.

For example, before an importer obtained roasted peanuts for which the importer had identified *Salmonella* as a hazard from a foreign supplier that was subject to the preventive controls regulations, the importer would audit the supplier (or obtain documentation of an audit performed by a third party) to determine whether the supplier's roasting process adequately controlled the *Salmonella.* Because the supplier was subject to the preventive controls regulations, the audit would include a review of the supplier's food safety plan. For example, the auditor would review whether the roasting process had been validated to significantly minimize *Salmonella* in peanuts and would examine whether the supplier had implemented the roasting procedures in accordance with the food safety plan (e.g., through observing the establishment's procedures and reviewing records).

Reviewing the food safety plan during the audit is consistent with GMA's recommendation that all supplier food safety and quality programs be substantiated and documented (Ref. 10). For foreign suppliers that are not required to have a food safety plan under section 418 of the FD&C Act but are required to have one under another FDA food safety regulation, or that have opted to have a plan even though not required to do so, the onsite audit would also be required to include a review of the foreign supplier's written plan, and its implementation of the plan, to assure that hazards identified by the importer are being adequately controlled.

For these reasons, proposed § 1.506(g)(3) (or § 1.506(g)(2) if Option 2 were adopted) states that an onsite audit conducted under § 1.506 must consider the relevant FDA food safety regulations and must include a review of the foreign supplier's written plan, if any, including its implementation, for the hazard being audited. We believe that an onsite audit concerning such a food should, at a minimum, include these actions. We request comment on these proposed requirements as well as on whether any other requirements regarding the scope and content of onsite audits are appropriate.

d. *Substitution of inspection by FDA or an officially recognized or equivalent food safety authority.* We tentatively conclude that, instead of an onsite audit conducted under § 1.506(g), (concerning hazards controlled or verified by a foreign supplier) or (h) (concerning microbiological hazards associated with certain RACs that are fruits or vegetables), an importer may rely on the results of an inspection of the foreign supplier conducted by FDA or the food safety authority of a country whose food safety system FDA has officially recognized as comparable to that of the United States (e.g., through a signed systems recognition arrangement between FDA and the country establishing official recognition of the foreign food safety system) or determined to be equivalent to that of the United States. Proposed § 1.506(g)(4) (under Option 1; this is § 1.506(g)(3) under Option 2) states that, to be valid for this purpose, the inspection would have to have been conducted within 1 year of the date that the onsite audit would have been required to be conducted. For inspections conducted by an officially recognized or equivalent food safety authority, proposed § 1.506(g)(4) states that the food that is the subject of the onsite audit must be within the scope of the official recognition or equivalence determination, and the foreign supplier must be in such country and under the regulatory oversight of the country's food safety authority.

As already noted, FSMA directs FDA to increase the number of inspections of foreign food manufacturing/processing facilities. We believe that it would be appropriate to allow an importer to use an FDA inspection in lieu of an audit by a qualified person to fulfill a supplier verification requirement under proposed § 1.506(g) or (h). Similarly, we also believe that it would be appropriate to allow an importer to use the results of an inspection of its foreign supplier that was conducted by the food safety authority of a country whose food safety system FDA has officially recognized or determined to be equivalent to that of the United States. Such inspections would provide an importer with information on the foreign supplier's control of hazards that is sufficiently similar to information that can be obtained from an onsite audit to be relied upon instead of such an audit. In addition, use of such inspection results could lessen the burden of conducting supplier verification activities by eliminating the need for an onsite audit.

We request comment on whether importers should be permitted to rely on an inspection of a foreign supplier by FDA or an officially recognized or equivalent food safety authority in substitution of an onsite audit. We request comment on whether the use of an FDA or foreign food safety authority inspection should be limited to the specific products/activities covered in the inspection, products/activities that concern the same hazard(s) as the food for which the onsite audit would have been required, or any other limitation in scope. We also request comment on the likelihood that importers would choose to rely on such inspections to meet the requirements for supplier verification under proposed § 1.506, rather than seek to import a food under the modified requirements in proposed § 1.513 (discussed in section II.N of this document) applicable to food imported from a foreign supplier in a country with an officially recognized or equivalent food safety system as described above. In addition, we request comment on whether there are other kinds of intergovernmental arrangements that might assist importers in meeting their foreign supplier verification requirements.

We propose to require that inspections of foreign suppliers by FDA or foreign food safety authorities be conducted within 1 year of the date that the onsite audit would have been required to be conducted to help ensure that such an inspection can provide information about the supplier's control of a food's hazards that is similar to the information that could be obtained from an onsite audit. If commenters believe that importers should be permitted to use such inspections as an alternative to onsite audits, we request comment on the appropriateness of the proposed 1-year time limitation for use of such inspection.

e. *Review of results of verification activities.* Importers' foreign supplier verification activities would not provide adequate assurance that suppliers are

controlling hazards if importers did not review the results of their verification activities and take corrective action if the results indicated that hazards were not adequately controlled. Therefore, proposed § 1.506(g)(5) (under Option 1; this is § 1.506(g)(4) under Option 2) would require that an importer promptly review the results of the verification activities that it conducts or for which it obtains documentation.

Proposed § 1.506(g)(5) further states that if the results of verification activities show that hazards identified as reasonably likely to occur with a food are not adequately controlled, the importer must take appropriate corrective action in accordance with proposed § 1.507(c). As discussed in section II.H.3 of this document, § 1.507(c) would require that an importer promptly take appropriate corrective actions if it determines that its foreign supplier does not produce a food in compliance with processes and procedures that provide at least the same level of public health protection as those required under section 418 or 419 of the FD&C Act, if either is applicable, or produces food that is adulterated under section 402 or misbranded under section 403(w) of the FD&C Act. The appropriate corrective actions would depend on the circumstances but could include discontinuing use of the foreign supplier until the cause or causes have been adequately addressed. Thus, under proposed § 1.506(g)(5), if, for example, the sampling and testing conducted by an importer in accordance with § 1.506(g)(2)(ii) (under Option 1) showed that a supplier was not adequately controlling a hazard reasonably likely to occur with a food, the importer likely would need to notify the supplier of the failing results so that the supplier could take appropriate corrective action, which could include changes to its processes and procedures or sources of ingredients. If the foreign supplier did not make changes necessary to ensure that it adequately controlled the hazard, the importer would need to cease obtaining the food from the supplier.

f. *Independence of qualified individuals.* Proposed § 1.506(g)(6) (under Option 1; this is § 1.506(g)(5) under Option 2) addresses the issue of financial conflicts of interests that might arise in the performance of verification activities by qualified individuals (as defined in proposed § 1.500). We recognize the possibility that a conflict of interest might arise when there is a financial relationship between a qualified individual who is conducting a verification activity (such as an onsite audit or lot-by-lot testing) and the foreign supplier whose procedures the qualified individual is reviewing. For example, the owner of an auditing firm might own substantial shares of stock in a foreign supplier that has requested an audit by the firm. On the other hand, § 1.506(g) and (h) permits the importer itself to conduct onsite audits of foreign suppliers and other verification activities under these regulations. In such cases, there would obviously be a financial relationship between the qualified individual, as an employee of the importer, and the importer itself, but this relationship should not pose a conflict of interest concern.

To address concerns about conflict of interest in the performance of FSVP activities, proposed § 1.506(g)(6) (§ 1.506(g)(5) under Option 2) specifies that a qualified individual who conducts any of the verification activities in § 1.505(g)(1), (g)(2), and (h) (§ 1.506(g)(1) and (h) under Option 2) must not have a financial interest in the foreign supplier and payment must not be related to the results of the activity conducted. Proposed § 1.506(g)(6) further states that this provision would not prohibit the importer or one of its employees from conducting the verification activity.

We invite comment on whether this prohibition reflects the appropriate approach to concerns about conflicts of interest in the performance of foreign supplier verification activities and, if not, what changes would be appropriate. We also request comment on whether and, if so, how, the regulations should specify what constitutes a financial interest.

8. Microbiological Hazards in RACs That Are Fruits or Vegetables and That Would Be Subject to the Produce Safety Regulations

As discussed in section II.G.3 of this document, because importers of produce RACs that are subject to the proposed regulations on produce safety would not be required to conduct a hazard analysis regarding microbiological hazards in these products, we are not proposing that importers of such produce conduct verification activities on a hazard-by-hazard basis in the manner described in section II.H.7 of this document. Instead, for such microbiological hazards we tentatively conclude that supplier verification with respect to these products should provide adequate assurances that the foreign supplier is producing the fruit or vegetable in accordance with processes and procedures that provide the same level of public health protection as those required under part 112, the produce safety regulations.

Because we have presented two options in our co-proposal concerning supplier verification activities, we are presenting a co-proposal regarding supplier verification activities for RACs that are fruits or vegetables. Under Option 1 of the co-proposal, we tentatively conclude that, because all microbiological hazards associated with produce RACs that are subject to the proposed produce safety regulations have the potential to result in serious adverse health consequences or death to humans or animals, it would be appropriate to require importers of this food to conduct onsite auditing to verify that the food is being produced in a manner that is consistent with part 112. We also believe that such audits should be subject to the requirements concerning the scope of auditing, substitution of certain inspection results, review of results of verification activities, and independence of qualified individuals conducting verification activities discussed in sections II.G.7.c through II.G.7.f of this document (proposed § 1.506(g)(3) through (g)(6)). Finally, because onsite auditing might also be required to verify control of any non-microbiological hazards associated with produce RACs that are subject to the proposed produce safety regulations, we propose to specify that an audit conducted to address microbiological hazards associated with such a food may be conducted in conjunction with an audit that is required under proposed § 1.506(g). For these reasons, under Option 1, proposed § 1.506(h) states that, for a RAC that is a fruit or vegetable and that is subject to part 112, in addition to the other requirements of § 1.506, before importing the fruit or vegetable from the foreign supplier and at least annually thereafter, the importer must conduct or obtain documentation of an onsite audit to provide adequate assurances that the foreign supplier is producing the fruit or vegetable in accordance with processes and procedures that provide the same level of public health protection as those required under part 112; that such audits are subject to § 1.506(g)(3) through (g)(6); and that an audit conducted under § 1.506(h) may be conducted in conjunction with an audit, if any, that is required under § 1.506(g).

Under Option 2 of the co-proposal on supplier verification activities, importers would choose, from among several possible verification activities, an activity that would enable the importer to adequately verify that a hazard has been adequately controlled. Consistent with this approach, under

Option 2, for a RAC that is a fruit or vegetable and that is subject to part 112, proposed § 1.506(h) would require the importer, in addition to meeting the other requirements of § 1.506, to conduct one or more of the verification activities listed in § 1.506(g)(1)(i) through (g)(1)(iv), before importing the fruit or vegetable from the foreign supplier and at least annually thereafter, to provide adequate assurances that the foreign supplier was producing the fruit or vegetable in accordance with processes and procedures that provide the same level of public health protection as those required under part 112. Option 2's proposed § 1.506(h) further states that any audits conducted under this paragraph would be subject to § 1.506(g)(2) through (g)(5) (as numbered in Option 2 of the co-proposal) and that an importer may conduct an activity under § 1.506(h) in conjunction with an activity conducted in accordance with § 1.506(g)(1)(i) through (g)(1)(iv).

We request comment on Options 1 and 2 of our co-proposal with respect to supplier verification of microbiological hazards in RACs that are fruits or vegetables that are subject to the produce safety regulations.

9. Hazards That Emerge Long After Foreign Supplier Processing But Before U.S. Entry

Some foods are manufactured by a foreign supplier and then stored for a relatively long time before being exported to the United States. For example, some dried, packaged foods are stored before being exported. It is even conceivable that the entity that produced the food might no longer be in existence at the time the food is imported into the United States. When there is an extended delay between the production and export of a food, a verification activity such as onsite auditing might not be possible or might provide little assurance that the food was produced under procedures that controlled the hazards. We request comment on what foreign supplier verification activities are appropriate for foods that are exported to the United States long after they are produced.

H. Complaints, Investigations, and Corrective Actions (Proposed § 1.507)

Proposed § 1.507 answers the question, ''What investigations and corrective actions must I conduct under my FSVP?'' We tentatively conclude that, as part of the FSVP, it is appropriate to require importers to review complaints concerning the foods they import, investigate possible adulteration or misbranding, take certain corrective actions when the foods they import do not meet applicable U.S. requirements, and revise their FSVPs when appropriate. These requirements would be generally consistent with the requirements applicable to juice and seafood processors under the HACCP regulations as well as those that would apply to food facilities under the Preventive Controls Proposed Rule. The proposal would direct the importer to use available information to determine whether its FSVP is inadequate and, if so, to appropriately revise its program so it meets the statutory requirement to provide adequate assurances that the food is compliant with applicable standards. Similarly, we believe that the proposed corrective action requirements are among those that, consistent with section 805(c)(2)(B) of the FD&C Act, are necessary and appropriate to verify that food imported into the United States is as safe as food produced and sold within the United States.

Proposed § 1.507(a) states that an importer must promptly conduct a review of any customer, consumer, or other complaint that the importer receives to determine whether the complaint relates to the adequacy of the importer's FSVP. Examples of such complaints might include a consumer complaint of illness following consumption of food imported by the importer and a customer complaint regarding a positive test for a pathogen in food received from the importer. Not all complaints that an importer might receive will concern its FSVP. However, complaints that might raise questions about how well an importer's FSVP is functioning could have a significant impact on food safety. For example, review of consumer complaints of illness linked to consumption of a product could result in an investigation revealing that a particular supplier is not adequately controlling a hazard, which could prompt the importer to reconsider whether the verification approach it uses with this product and supplier is appropriate. Therefore, we propose that importers be required to review all complaints to determine whether they relate to the FSVP.

Proposed § 1.507(b) states that if an importer becomes aware that an article of imported food is adulterated under section 402 or misbranded under section 403(w) of the FD&C Act, either through review of a complaint or by other means, the importer must promptly investigate the cause or causes of such adulteration or misbranding and document any such investigation. An importer might learn that a food it imported is adulterated or misbranded as a result of investigating a complaint (such as a consumer reporting becoming ill after eating an imported food), being notified by FDA (such as during an Agency investigation of possible contamination), through media reports, or by other means. Regardless of how the importer becomes aware of adulteration or misbranding, the importer would be required to promptly investigate what might have caused the problem with the food. The investigation would seek to determine the source of the adulteration or misbranding, such as contamination of a food with *Salmonella* due to the use of improperly cleaned machinery or the introduction of metal fragments generated during the manufacture of a food. In many cases, the investigation might require the importer to coordinate with the foreign supplier to evaluate the information on adulteration or misbranding and review relevant factors and processes (e.g., source of raw materials, procedures for harvesting, manufacturing, processing, packing, labeling, and transportation) to identify the source of the problem and take steps to correct it.

Proposed § 1.507(c) would require an importer to take appropriate corrective actions if it determines that one of its foreign suppliers did not produce the food in compliance with processes and procedures that provide the same level of public health protection as those required under section 418 or 419 of the FD&C Act, if either is applicable, or produced food that is adulterated under section 402 or misbranded under section 403(w) of the FD&C Act. Proposed § 1.507(c) states that this determination regarding the need for corrective action could be based on an investigation conducted under § 1.507(b), the verification activities the importer conducts under § 1.506 or § 1.511(c) (the latter of which concerns verification requirements for importers of finished dietary supplements, discussed in section II.L.2 of this document), the FSVP reassessment that the importer conducts under proposed § 1.508 (discussed in section II.I of this document), or otherwise. Regardless of how an importer obtains the information that forms the basis of the importer's determination that its foreign supplier did not produce the imported food in accordance with the applicable requirements, the importer must take action in response to this noncompliance.

Proposed § 1.507(c) further states that the appropriate corrective actions by the importer will depend on the circumstances but could include discontinuing use of the foreign

supplier until the cause or causes of noncompliance, adulteration, or misbranding have been adequately addressed. Finally, proposed § 1.507(c) would require the importer to document any corrective actions it takes in accordance with this provision.

Under proposed § 1.507(d), if an importer determines, by means other than its verification activities conducted under § 1.506 or § 1.511(c) or its FSVP reassessment conducted under § 1.508, that one of its foreign suppliers does not produce an imported food in compliance with processes and procedures that provide the same level of public health protection as those required under section 418 or 419 of the FD&C Act, if either is applicable, or produces food that is adulterated under section 402 or misbranded under section 403(w), the importer must promptly investigate to determine whether its FSVP is adequate and, when appropriate, modify the program. For example, FDA might inform an importer that the Agency has determined that one of the importer's foreign suppliers does not have an adequate food safety plan as required under section 418. Upon investigating, the importer might conclude that it should modify its supplier verification procedures to increase the likelihood that the importer will be able to detect future supplier noncompliance. Proposed § 1.507(d) further states that an importer must document any investigation, corrective actions, and FSVP changes it makes under this provision.

Proposed § 1.507(e) states that § 1.507 would not limit an importer's obligations with respect to other laws enforced by the Agency, such as those relating to product recalls. In addition to recall provisions, these laws might include, for example, the provisions on the Reportable Food Registry in section 417 of the FD&C Act (21 U.S.C. 350f).

I. Reassessment of FSVP (Proposed § 1.508)

Proposed § 1.508 answers the question, ''How must I reassess the effectiveness of my FSVP?'' Unless an importer periodically assesses how its FSVP is functioning, a once-effective program could become ineffective over time, due to changes to the foods that are imported, the processing methods of foreign suppliers, or other factors affecting safety. As with corrective actions, we believe that requiring importers to periodically reassess their FSVPs will help ensure that the FSVP is adequate to provide assurances that the food is compliant with applicable standards, within the meaning of section 805(c)(2)(A) of the FD&C Act. We also tentatively conclude that it is necessary and appropriate in accordance with section 805(c)(2)(B).

Proposed § 1.508(a) sets forth requirements concerning the timing of reassessments. Proposed § 1.508(a)(1) states that, except as specified in proposed § 1.508(a)(2), for each food imported, the importer must conduct a reassessment of its FSVP for the food, as described in proposed § 1.508(b), within 3 years of establishing the FSVP and within 3 years of the last reassessment. This requirement parallels the required frequency for periodic reanalysis of food safety plans in the Preventive Controls Proposed Rule. For the reasons stated in that proposed rule, we tentatively conclude that reevaluation is also necessary to ensure the continued validity of an FSVP.

Under proposed § 1.508(a)(2), however, an importer might be required to reassess its FSVP sooner than every 3 years. Proposed § 1.508(a)(2) would require an importer to reassess the effectiveness of its FSVP for a food it imports when the importer becomes aware of new information about potential hazards associated with the food. Examples of such information might include information on changes to raw materials or the source of raw materials, product formulation (e.g., a change that results in higher moisture in a processed cheese could lead to *C. botulinum*), processing methods or systems (e.g., the foreign supplier switches from dedicated production lines for chocolate with nuts and chocolate without nuts to using combined production lines), finished product distribution systems, or the intended use or consumers of the food.

We tentatively conclude that effective reassessment of an importer's FSVP should begin with a reanalysis of the hazards that might be reasonably likely to occur with a food. Therefore, proposed § 1.508(b) would require an importer, in conducting a reassessment of its FSVP, to update its hazard analysis for the food in accordance with § 1.505. For example, if, subsequent to an importer's hazard analysis for a food, the food became linked to the outbreak of a disease with which the food was not previously associated, this could result in identification of a new hazard reasonably likely to occur with the food. Proposed § 1.508(b) further states that if the hazards the importer had previously identified as reasonably likely to occur change as a result of the reassessment, the importer must promptly determine whether the verification activities the importer conducts under § 1.506 need to be changed to comply with that section and, if so, promptly implement any such changes. For example, identification of a new hazard associated with a food could, depending on the type of hazard, necessitate a change in supplier verification activity in accordance with § 1.506.

J. Identification of Importer at Entry (Proposed § 1.509)

Proposed § 1.509 answers the question, ''How must the importer be identified at entry?'' Section 1.509 is intended to ensure that the importer of each food imported or offered for import into the United States is accurately identified so that the Agency can effectively implement and monitor compliance with the FSVP regulations.

1. Designation of U.S. Agent or Representative

Proposed § 1.509(a) would require, before an article of food is imported or offered for import into the United States, that the foreign owner or consignee of the food (if there is no U.S. owner or consignee) designate a U.S. agent or representative as the importer of the food for the purposes of the definition of ''importer'' in § 1.500. This would ensure that, when there is no U.S. owner or consignee of the food at the time of U.S. entry, there will be an entity in the United States—the U.S. agent or representative of the foreign owner or consignee of the food—who will be responsible for meeting the FSVP requirements with respect to that food. We also note that, under the proposed regulations, the U.S. agent or representative may rely on qualified individuals to perform FSVP activities on its behalf.

2. Identification of the Importer

Proposed § 1.509(b) would require importers to obtain a DUNS number (if the importer does not already have one). Proposed § 1.509(c) would require an importer to ensure that, for each line entry of food product offered for importation into the United States, the importer's name and DUNS number are provided electronically when filing entry with CBP to identify the importer of the product. Our reasons for proposing these requirements are twofold, although they both concern our ability to accurately identify importers who are subject to the FSVP regulations.

First, knowing the identity of the importer for a particular food being imported would help us carry out section 421(b) of the FD&C Act. This provision, also added by FSMA, requires FDA to allocate its resources for examining imported products based on certain risk factors, including the rigor and effectiveness of the importer's

FSVP. To effectively implement this, we need to know, at the time of importation, who the importer is. While we currently receive information identifying the ''importer'' as part of entry and as part of prior notice under section 801(m) of the FD&C Act, the entities identified under those procedures are not necessarily the ''importer'' for the purposes of FSVP.

In addition, accurate information identifying importers will enable us to effectively implement, monitor compliance with, and enforce the FSVP requirements. This information would help the Agency create a comprehensive and up-to-date database that will enable us to efficiently and effectively monitor compliance with and enforce the FSVP regulations.

Obtaining the identity of the importer at entry could also help us meet the requirement, stated in section 805(g) of the FD&C Act, to ''publish and maintain on [our] Internet Web site . . . a current list that includes the name and location of, and other important information deemed necessary by [FDA] about, importers participating under this section [i.e., section 805].'' The meaning of the phrase ''importers participating under this section'' is ambiguous. Among other things, it could mean that the list must include all importers subject to section 805 or only those subject to section 805 and in compliance with that provision. If so, FDA must have a means of identifying these importers. One way to do this would be to obtain information about importers at the time they are shipping products for entry into the United States. We request comment on the meaning of the phrase and the purpose of section 805(g).

We considered requiring food importers to register with FDA to develop a database of importers. Some, but not all, importers currently register with FDA as food facilities and are assigned registration numbers under 21 CFR part 1, subpart H (§§ 1.225 through 1.243). Because not all importers are required to register, the current food facility registration system would not be sufficient for FSVP purposes. Moreover, obtaining the identity of the importer at the time of entry would enable us to both carry out section 421(b) of the FD&C Act and develop a database of importers without creating a new or revised registration system. By collecting this information with each entry, we would know the firm's last importation date and would receive ''fresh'' information with each importation (as opposed to, with a registration system, when the firm updates its registration or periodically re-registers). With the information gathered at the time of entry, our database would be able to include the types of food the firm is importing, which would better enable the Agency to assess and allocate its compliance and enforcement resources. For example, this information would help us target for inspection firms that import high-risk products more often than other firms and enable us to identify importers who should participate in the recall of an adulterated food product.

To identify the importer, proposed § 1.509(b) would require each importer to obtain a DUNS number and proposed § 1.509(c) would require each importer to ensure that, for each line of entry of food product offered for importation, the importer's name and DUNS number are provided. DUNS is an international business entity listing system under which a company can obtain, at no charge, a unique identification number for a business entity. Dun and Bradstreet continuously updates the business entity information (e.g., name, address, contact numbers) based on automated searches of publicly available information and regular follow-up with each business entity. We believe that, using the DUNS numbers that would be submitted at entry for each importer of food, we could develop a database of information about importers (including their location and the foods they import) that would be comparable to the information that we could obtain through an importer registration system and also enable us to effectively monitor importers' compliance with the FSVP requirements. The importer's name and DUNS number would enable FDA to accurately identify the importer. The use of DUNS, as a unique numerical ID, is less prone to mistake or ambiguity than the use of the firm's name and address. Obtaining both the importer's name and DUNS number would guard against inadvertent mistakes in providing just the latter. With respect to section 805(g) of the FD&C Act, depending on how we interpret this provision, the use of the unique DUNS number would help ensure that we have an accurate list of ''importers participating under this section.''

We are currently conducting the study, required under section 110(i) of FSMA, regarding the need for, and challenges associated with, development and implementation of a program that requires the use of a unique identification number for each registered food facility and, as appropriate, ''each broker that imports food into the United States.'' We intend to take the results of this study into consideration in finalizing the requirements in proposed § 1.509 concerning identification of the importer at entry. We request comment on the proposed use of DUNS numbers to identify importers under the FSVP regulations and, if you recommend use of a different identifier, what that identifier should be.

3. Electronic Submission of Information

Proposed § 1.509(c) would require that the information identifying the importer of each line of entry of food product be provided electronically when filing entry with CBP. We tentatively conclude that this information must be submitted electronically to enable the Agency to effectively monitor and enforce compliance with the FSVP regulations. With several million product lines of food being imported into the United States each year, monitoring the safety of imported food imposes huge demands on FDA resources. In addition, the Agency has begun implementing the Predictive Risk-based Evaluation for Dynamic Import Compliance Targeting (PREDICT) electronic import screening system to target higher-risk products for examination and sampling and minimize delays for shipments of lower-risk products. Requiring the electronic submission of importer information would improve the accuracy and therefore the efficiency of PREDICT for the purposes of section 421(b) of the FD&C Act by allowing fast and accurate identification of importers not in compliance with the FSVP regulations. The CBP generally receives information about imports at entry in electronic form, so requiring electronic submission of importer information should require little change to import entry procedures. In addition, if section 805(g) of the FD&C Act is interpreted to mean that the list of participating importers must include all importers subject to section 805, or all importers subject to section 805 and in compliance with that provision, then it will be much more efficient to build such a database using information submitted electronically. For these reasons, we tentatively conclude that requiring the electronic submission of importer identifying information for a food when filing entry with CBP will help us effectively monitor and enforce compliance with the FSVP regulations and carry out section 421(b), and is therefore authorized under sections 805 (including section 805(c)(2)(B)), 421(b), and 701(a) of the FD&C Act.

K. Records (Proposed § 1.510)

Proposed § 1.510 answers the question, ''How must I maintain records of my FSVP?''

Proposed § 1.510(a) would require importers to sign and date records concerning their FSVPs upon initial completion and upon any modification of the FSVP.

Proposed § 1.510(b) would require importers to maintain records required under the FSVP regulations in English and make these records available promptly to an authorized FDA representative, upon request, for inspection and copying. Section 805(d) of the FD&C Act states that records related to a foreign supplier verification program ''shall be made available promptly to a duly authorized representative [of FDA] upon request.'' Proposed § 1.510(b) therefore states that an importer must maintain records at its place of business or at a reasonably accessible location; records would be considered to be at a reasonably accessible location if they could be immediately retrieved from another location by computer or other electronic means. Proposed § 1.510(b) further states that if requested in writing by FDA, an importer must send records to the Agency electronically rather than making the records available for Agency review at the importer's place of business. We tentatively conclude that requiring prompt delivery to FDA will better enable us to efficiently and effectively monitor importers' compliance with the FSVP regulations and is therefore also authorized by sections 805 and 701(a) of the FD&C Act. We also believe that such access would reduce the burden on importers posed by a visit by Agency representatives to an importer's place of business.

Proposed § 1.510(c) would require that all records be legible and stored to prevent deterioration or loss.

Proposed § 1.510(d) sets forth requirements for the retention of FSVP records. Consistent with section 805(d) of the FD&C Act, proposed § 1.510(d) would require importers to maintain all records for a period of at least 2 years, but the start of the 2-year period would differ depending on the type of record. We tentatively conclude that it is appropriate that importers maintain certain records, such as hazard analysis determinations, documentation of hazard control by an importer or its customer, and determinations that use of a particular foreign supplier verification activity is appropriate under § 1.506(g), for as long as the records remain in use and are not revised or replaced. Therefore, under proposed § 1.510(d)(1), except as specified in § 1.510(c)(2), importers must maintain records referenced in subpart L until at least 2 years after their use is discontinued (e.g., because the importer no longer imports a particular food, no longer uses a particular foreign supplier, or has changed its FSVP procedures).

Records that concern the actual performance of supplier verification activities, relate to complaints, investigations, and corrective actions associated with particular foods, or involve the documentation of FSVP reassessments are not records that remain in use until revised; consequently, we tentatively conclude that the retention period for these records should begin at the time that the records are created or obtained. Therefore, proposed § 1.510(d)(2) would require importers to maintain records required under §§ 1.506(g)(1), (g)(2), and (h) (certain verification activities) (these would be the applicable provisions under Option 1 of the co-proposal regarding supplier verification activities; under Option 2, the relevant provisions would be § 1.506(g)(1) and (h)), 1.507 (investigations and corrective actions), 1.508 (FSVP reassessments), 1.511 (requirements for food subject to certain dietary supplement CGMP regulations), and 1.513(b) (conditions and requirements for food imported from a country whose food safety system FDA had officially recognized as comparable or determined to be equivalent) for a period of at least 2 years after the records were created or obtained, except that the importer must maintain records of any changes to its FSVP in accordance with § 1.507(d) or § 1.508(b) until at least 2 years after their use is discontinued.

L. Dietary Supplements and Dietary Supplement Components (Proposed § 1.511)

Proposed § 1.511 answers the question, ''What FSVP must I have if I am importing a food subject to certain dietary supplement good manufacturing practice regulations?'' Under section 103(g) of FSMA, facilities that manufacture, process, pack, or hold dietary supplements, and that are in compliance with section 402(g)(2) (concerning CGMP regulations for dietary supplements) and 761 (concerning adverse event reporting for dietary supplements) of the FD&C Act (21 U.S.C. 342(g)(2) and 379aa–1, respectively), are exempt from the preventive controls requirements set forth in section 418 of the FD&C Act. We are proposing FSVP requirements for dietary supplements and dietary supplement components that reflect the food safety regulations applicable to those products (i.e., the dietary supplement CGMP regulations) rather than the general approach of verifying that hazards identified as reasonably likely to occur are being adequately controlled.

The modified requirements would vary depending on whether the importer is bringing in the following:

- Dietary supplement components or dietary supplements that will be subjected to further processing (including packaging or labeling); or
- ''Finished'' dietary supplements.

The FSVP requirements applicable to the importation of these products are set forth below.

1. Dietary Supplements for Further Processing

The dietary supplement CGMP regulations in § 111.70 (21 CFR 111.70) include provisions requiring firms that manufacture, package, or label dietary supplements to establish specifications for, among other things, components and packaging, as follows:

- Specifications for each component used in manufacturing a dietary supplement (§ 111.70(b)).
- Specifications for dietary supplement packaging that may come in contact with dietary supplements (§ 111.70(d)).
- Specifications to provide assurance that products from a supplier for packaging and labeling as a dietary supplement (for distribution rather than return to the supplier) are adequately identified and consistent with the purchase order (§ 111.70(f)).

Part 111 (e.g., §§ 111.73 and 111.75) requires these firms to verify that the specifications established under § 111.70 are met. This applies regardless of whether the components are imported or sourced domestically.

We believe that these specification and verification provisions in the dietary supplement CGMP regulations provide adequate assurances, in light of the nature of the product being imported, that the supplier produces the food in compliance with sections 402 and 403(w) of the FD&C Act. For this reason, we are proposing, in § 1.511(a), that importers who are required to establish specifications under § 111.70(b), (d), or (f) with respect to a food they import, and who are in compliance with the requirements of part 111 applicable to determining whether those specifications are met, would not be required to comply with the requirements of §§ 1.503 through 1.508 (except § 1.506(a)). This would mean that such importers of dietary

supplements and dietary supplement components complying with part 111 would not be required to comply with most of the generally applicable FSVP requirements, including those on review of food and supplier compliance status, hazard analysis, supplier verification (except for listing of suppliers), investigative and corrective actions, and FSVP reassessment. Instead, proposed § 1.511(a) would require such importers to comply with the requirements in part 111 applicable to determining whether the specifications they established are met for such food and with the requirements in §§ 1.506(a) (listing of foreign suppliers), 1.509 (identification of the importer at entry), and 1.510 (records). Proposed § 1.511(a) further states that this requirement would not limit these importers' obligations with respect to part 111 or any other laws enforced by FDA.

We note that if an importer who was required to establish specifications under § 111.70(b), (d), or (f) with respect to a food they imported was not in compliance with the requirements for determining whether those specifications were met, we could refuse admission of the food on the ground that it was adulterated because it was not in compliance with CGMP (under section 801(a)(1) of the FD&C Act) and, provided that an alternative FSVP was not in place, on the ground that the importer was in violation of section 805 of the FD&C Act (concerning FSVPs) (under section 801(a)(3)). We anticipate that such an importer typically would seek to come into compliance with the relevant specification provisions of part 111, and thereby bring itself into compliance with proposed § 1.511(a), rather than elect to revise its approach to foreign supplier verification by complying with the ''standard'' FSVP requirements (e.g., regarding compliance status review, hazard analysis, and supplier verification).

We are proposing, in § 1.511(b), to establish similar requirements for importers who are not subject to these specification and verification requirements under part 111, but whose customers are subject to those requirements. The only difference from the requirements we are proposing for importers who are themselves subject to those specification provisions is that the importer also would have to obtain written assurance that its customer was in compliance with those provisions. Thus, proposed § 1.511(b) would provide that if an importer's customer is required to establish specifications under § 111.70(b), (d), or (f) with respect to an imported food, the customer is in compliance with the requirements of part 111 applicable to determining whether those specifications are met, and the importer annually obtains from its customer written assurance that it is in compliance with those requirements, then for that food the importer must comply with the requirements in §§ 1.506(a), 1.509, and 1.510, but is not required to comply with the requirements of §§ 1.503 through 1.508 (except § 1.506(a)).

We request comment on whether it is appropriate to establish modified FSVP requirements for importers of dietary supplements and dietary supplement components when the importer or its customer will be subject to the above-noted specification provisions in the dietary supplement CGMP regulations. If you believe that modified requirements are appropriate, we request comment on the appropriateness of the specific requirements that we have proposed.

2. Finished Dietary Supplements

We also are proposing modified FSVP requirements for importers of ''finished'' dietary supplements, by which we mean, for purposes of this proposal, packaged and labeled dietary supplements that are not subject to further processing. Foreign suppliers of these products are subject to the very detailed and comprehensive dietary supplement CGMP regulations. Suppliers that are in compliance with these regulations, and with section 761 of the FD&C Act (relating to serious adverse event reporting), are exempt from section 418 of the FD&C Act (preventive controls) with regard to the manufacturing, processing, packing, and holding of a dietary supplement. Therefore, we tentatively conclude that the verification conducted by importers of these products should be specific to these CGMP regulations.

One key difference in the FSVP requirements for importers of finished dietary supplements is that the importer would not have to evaluate the hazards reasonably likely to occur. This is appropriate because the dietary supplement CGMP regulations effectively address the control of relevant hazards by including provisions encompassing all aspects of dietary supplement production. Therefore, we tentatively conclude that the importer should verify its supplier's compliance with part 111 and not conduct a separate hazard evaluation to use as a means to determine what to verify. Another potential key difference is that we are not proposing that importers of finished dietary supplements always be required to conduct onsite auditing for SAHCODHA hazards, as would be required under Option 1 of proposed § 1.506(g)(1), because we are not requiring these importers to conduct hazard analyses for the dietary supplements they import under § 1.511(c) and the relevant hazards are not necessarily SAHCODHA hazards. However, this potential difference would not exist under Option 2 of proposed § 1.506(g)(1).

For these reasons, we are proposing, under § 1.511(c)(1), that if a dietary supplement is being imported and neither § 1.511(a) nor (b) is applicable, the importer must comply with § 1.511(c) and the requirements in §§ 1.502 through 1.504 and §§ 1.507 through 1.510, but it is not required to comply with the requirements of §§ 1.505 and 1.506. Proposed § 1.511(c)(1) further states that this requirement does not limit the importer's obligations with respect to part 111 or any other laws enforced by FDA.

As part of their verification requirements, importers of finished dietary supplements also would be subject to the following supplier verification requirements (some of which mirror the standard requirements in proposed § 1.506), as follows:

- List of foreign suppliers: The importer must maintain a written list of foreign suppliers (proposed § 1.511(c)(2)).
- Foreign supplier verification procedures: The importer must establish and follow adequate written procedures for conducting foreign supplier verification activities (proposed § 1.511(c)(3)).
- Purpose of supplier verification: The importer's foreign supplier verification activities must provide adequate assurances that the supplier is producing the dietary supplement in accordance with the requirements of part 111 (i.e., the dietary supplement CGMP regulations) (proposed § 1.511(c)(4)).
- Supplier verification activities: For each dietary supplement imported, the importer must conduct one or more of the verification activities listed in proposed § 1.511(c)(5)(i) through (c)(5)(iv) before using or distributing the dietary supplement and periodically thereafter (proposed § 1.511(c)(5)). These are the same verification activities in proposed § 1.506(g)(2)(i) through (g)(2)(iv) under Option 1 and proposed § 1.506(g)(1)(i) through (g)(1)(iv) under Option 2 for supplier verification, i.e., periodic onsite auditing, periodic or lot-by-lot sampling and testing, periodic review of the foreign supplier's food safety records, and any other procedure that the

importer has established as being appropriate. The importer of the dietary supplement must determine and document which verification activity or activities are appropriate to adequately verify that the foreign supplier is in compliance with the requirements of part 111, and determine and document how frequently the verification activities must be conducted. As under proposed § 1.506(g)(2)(i) through (g)(2)(iv) (under Option 1), the importer would have to document, or obtain documentation of, any performance of these activities.

- Requirements of onsite auditing: Any onsite audit conducted under § 1.511(c)(5)(i) must consider the requirements of part 111 (proposed § 1.511(c)(6)). The audit also must include a review of the foreign supplier's written food safety plan, if any, and the supplier's implementation of such plan.
- Substitution of inspection for onsite audit: Instead of an onsite audit conducted under § 1.511(c)(5)(i), an importer may rely on the results of an inspection of the foreign supplier by FDA or the food safety authority of a country whose food safety system FDA has officially recognized as comparable or determined to be equivalent to that of the United States, provided that the inspection was conducted within 1 year of the date that the onsite audit would have been required to be conducted (proposed § 1.511(c)(7)). For inspections conducted by an officially recognized or equivalent food safety authority, the food that is the subject of the onsite audit must be within the scope of the official recognition or equivalence determination, and the foreign supplier must be in such country and under the regulatory oversight of the country's food safety authority.
- Review of results of verification activities: The importer must promptly review the results of the verification activities that it conducts or obtains documentation of under § 1.511(c)(5) (proposed § 1.511(c)(8)). If the results show that the foreign supplier does not meet the standard in § 1.511(c)(4), the importer must take appropriate action in accordance with § 1.507(c).
- Independence of qualified individuals conducting verification activities: A qualified individual who conducts any of the verification activities set forth in § 1.511(c)(5) must not have a financial interest in the foreign supplier and payment must not be related to the results of the activity (proposed § 1.511(c)(9)). This would not prohibit the importer or one of its employees from conducting the verification activity.

We request comment on whether establishing modified FSVP requirements for importers of finished dietary supplement is appropriate and, if so, whether the requirements we have proposed are appropriate.

We also request comment on whether it would be more appropriate to add the proposed FSVP requirements applicable to dietary supplements to the regulations on dietary supplement CGMP in part 111, instead of to the FSVP regulations in proposed subpart L of part 1. Such an approach would parallel the inclusion of importer requirements in the HACCP regulations on juice and seafood in parts 120 and 123 and might facilitate compliance by dietary supplement importers and suppliers with the applicable regulations.

3. Other Foods

We request comment on whether there are any other types of food, in addition to dietary supplements, for which we should establish modified foreign supplier verification requirements and, if so, what these requirements should be. For example, should they include an evaluation of the hazards reasonably likely to occur with the type of food or, as with finished dietary supplements, should there be no requirement to conduct a hazard analysis? Similarly, what verification activities would be appropriate for the type of food? Your comments should include the rationale for any modified requirements, including whether, such as with dietary supplements, they are based on the nature of any existing regulations governing the manufacturing/processing, raising, or harvesting of the type of food. With respect to any such foods for which there are existing regulations establishing safety-related requirements (e.g., part 114 regarding acidified foods, part 118 regarding shell eggs), we also request comment on whether modified supplier verification requirements for importers of these foods should be added to the regulations concerning the production of these foods or to the FSVP regulations being proposed under this proposed rule (i.e., proposed subpart L of part 1).

M. Very Small Importers and Very Small Foreign Suppliers (Proposed § 1.512)

Proposed § 1.512 answers the question, ''What FSVP may I have if I am a very small importer or I am importing from a very small foreign supplier?'' As stated in sections I.C and II.A.8 of this document, we are proposing to adopt modified FSVP requirements for very small importers and food from very small foreign suppliers. Section 805(c)(3) of the FD&C Act directs FDA to, as appropriate, take into account differences among importers and types of imported food, including based on the level of risk posed by the imported food. The modified requirements we are proposing are for situations that involve a relatively low volume of imported food, which should reduce consumers' exposure to, and thus potential risk from, the food.

As stated in proposed § 1.500, the proposed definitions of very small importer and very small foreign supplier would include a maximum annual sales volume of $500,000 in annual food sales. This is a conservative measure of the volume of food imported into the United States because a supplier may ship food to other countries and an importer may sell both domestically sourced and imported food. Using annual sales of food, we believe, would be a workable approach for importers, suppliers, and FDA to determine who is subject to the modified requirements applicable to very small importers and food from very small foreign suppliers. Other measures for the volume of imported food, while perhaps more precise, would be more complex. We request comment on our proposed measure.

In sections 418(l) and 419(f) of the FD&C Act, ''qualified facilities'' and certain farms are subject to qualified exemptions with modified requirements. Eligible establishments are defined, in part, based on the relatively limited value of their annual food sales, which for those provisions is also capped at $500,000. The proposed modified FSVP requirements for very small importers and food from very small foreign suppliers are designed to specify verification activities that take into account the risk to overall public health posed by such food. In the context of the nature of their imports, we tentatively conclude that the modified requirements described below would be adequate to provide assurances that the foreign suppliers to these importers produce food in compliance with processes and procedures that provide the same level of public health protection as those required under section 418 or 419 of the FD&C Act, as applicable, and sections 402 and 403(w) of the FD&C Act.

1. Eligibility

Proposed § 1.512(a) states that § 1.512 applies only when the importer is a very small importer or when the food it is importing is from a very small foreign supplier.

2. Applicable Requirements

Importers who meet the definition of very small importer may follow proposed § 1.512, but they could instead choose to follow the standard FSVP requirements (or the FSVP requirements under proposed § 1.513 for food from countries with officially recognized or equivalent food safety systems). Similarly, importers of food from very small foreign suppliers may follow proposed § 1.512, but they are not required to do so. Therefore, proposed § 1.512(b)(1) states that if § 1.512 applies and the importer chooses to comply with the requirements in this section, the importer must document, at the end of each calendar year, that it meets the definition of very small importer in § 1.500 or that the foreign supplier meets the definition of very small foreign supplier in § 1.500, whichever is applicable. Proposed § 1.512(b)(1) further states that, for the purpose of determining whether the definition of very small importer or very small foreign supplier is satisfied, the baseline year for calculating the adjustment for inflation is 2012. Proposed § 1.512(b)(1) adds that if the importer or the foreign supplier conducts any food sales in currency other than U.S. dollars, the importer must use the relevant currency exchange rate in effect on December 31 of the year in which sales occurred to calculate the value of these sales.

Proposed § 1.512(b)(2) would require that if an importer is eligible to import a food under this section and chooses to comply with the requirements in § 1.512(b), it also must comply with the requirements in §§ 1.502 through 1.504 (concerning the ''scope'' of an FSVP, the use of qualified individuals, and review of food and foreign supplier compliance status, respectively) and § 1.509 (concerning identification of the importer at entry), but it is not required to comply with the requirements in §§ 1.505 through 1.508 or § 1.510. This means that very small importers and importers bringing in food from very small foreign suppliers would not have to meet many of the standard FSVP requirements, including those for hazard analysis and supplier verification.

3. List of Foreign Suppliers

Proposed § 1.512(b)(3) would require a very small importer and an importer who obtains food from very small foreign suppliers to maintain a written list of foreign suppliers from which it is importing food.

4. Supplier Verification

Under proposed § 1.512, very small importers and importers of food from very small foreign suppliers would not be required to conduct hazard analyses for each food they import. The other most significant modification of FSVP requirements for these entities involves supplier verification. Very small importers and importers of food from very small foreign suppliers would be required to obtain from their foreign suppliers, before importing a food and at least every 2 years thereafter, a written assurance that the supplier is producing the food in compliance with processes and procedures that provide at least the same level of public health protection as those required under section 418 or 419 of the FD&C Act, if either is applicable, and in compliance with sections 402 and 403(w) of the FD&C Act. We believe that it would be appropriate for importers to obtain this written assurance at least every 2 years so that the assurance that the importer obtains will more accurately reflect the current operations of the foreign supplier than would relying on assurance that was not updated.

To provide adequate assurance of the safety of the food obtained by very small importers and from very small foreign suppliers, we tentatively conclude that the written assurance from the foreign supplier must include a brief description of the processes and procedures that the supplier is following to ensure the safety of the food. Thus, the supplier would need to provide the importer with enough information about its processes and procedures to enable the importer to understand what the supplier is doing to ensure the safety of the imported food.

For these reasons, proposed § 1.512(b)(4) would require, for each food imported, that the very small importer or importer of food from a very small foreign supplier obtain written assurance, before importing the food and at least every 2 years thereafter, that its foreign supplier is producing the food in compliance with processes and procedures that provide at least the same level of public health protection as that required under section 418 or 419 of the FD&C Act, if either is applicable, and is producing the food in compliance with sections 402 and 403(w) of the FD&C Act. Proposed § 1.512(b)(4) further states that the written assurance must include a brief description of the processes and procedures that the foreign supplier is following to ensure the safety of the food.

Although we do not believe that merely checking the food safety plan of a supplier is an appropriate stand-alone verification activity under the standard supplier verification requirements in proposed § 1.506, we believe that obtaining written assurance of supplier compliance, including a description of the processes and procedures used to ensure safety, is an appropriate verification activity for importers of such food under proposed § 1.512. We request comment on whether these proposed verification activities are appropriate for very small importers and importers of food from very small foreign suppliers and, if not, what verification activities these importers should instead be required to conduct.

5. Corrective Actions

We tentatively conclude that it is appropriate that very small importers and importers of food from very small foreign suppliers not be required to comply with the provisions on complaint review and investigation of adulteration or misbranding in proposed § 1.507(a) and (b). Similarly, because these importers would be subject to the modified FSVP requirements set forth in § 1.512, we conclude that it is not appropriate to require these importers to comply with the requirements to investigate to determine the adequacy of, and make appropriate changes to, their FSVPs under proposed § 1.507(d).

However, we tentatively conclude that, as part of adequately verifying and ensuring the safety of imported food, very small importers and importers of food from very small foreign suppliers should be required to take corrective actions if they determine that a foreign supplier is not producing a food in compliance with applicable requirements. Therefore, proposed § 1.512(b)(5) would require these importers to promptly take appropriate corrective actions if they determine that a foreign supplier does not produce the food in compliance with processes and procedures that provide at least the same level of public health protection as those required under section 418 or 419 of the FD&C Act, or produces food that is adulterated under section 402 or misbranded under section 403(w) of the FD&C Act, and to document any such corrective actions. A need for corrective action could be based, for example, on the foreign supplier compliance status review conducted by the importer. Proposed § 1.512(b)(5) further states that the appropriate corrective actions will depend on the circumstances but could include discontinuing use of the foreign supplier until the cause or causes of noncompliance, adulteration, or

misbranding have been adequately addressed. Proposed § 1.512(b)(5) also notes that this provision does not limit the importer's obligations with respect to other laws enforced by FDA, such as those relating to product recalls.

6. Records

Because of the modified nature of the FSVP requirements for very small importers and importers of food from very small foreign suppliers, we are proposing to tailor the recordkeeping requirements in proposed § 1.510 for these importers as discussed below.

Proposed § 1.512(b)(6)(i) would require that a very small importer or importer of food from a very small foreign supplier maintain required FSVP records, in English, and make them available promptly to an authorized FDA representative, upon request, for inspection and copying. Further, proposed § 1.512(b)(6)(i) would require such an importer to maintain records at its place of business or at a reasonably accessible location; records would be considered to be at a reasonably accessible location if they could be immediately retrieved from another location by computer or other electronic means. Finally, proposed § 1.512(b)(6)(i) would require a very small importer or importer of food from a very small foreign supplier, when requested in writing by FDA, to send records to the Agency electronically or by mail rather than making the records available for review at its place of business. We propose to allow these importers to provide records by mail instead of electronically in the event that providing records electronically might be significantly burdensome to some of these entities (e.g., due to increased computer-related expenses).

Proposed § 1.512(b)(6)(ii) would require that all records maintained by very small importers and importers of food from very small foreign suppliers be legible and stored to prevent deterioration or loss.

Because they are subject to different FSVP requirements, very small importers and importers of food from very small foreign suppliers, unlike other importers, will not be creating records that need to be maintained for as long as the records remain in use, such as records of hazard analysis determinations and determinations as to appropriate verification activities. Consequently, proposed § 1.512(b)(6)(iii) would require these importers to maintain required FSVP records for a period of at least 2 years after the records were created or obtained. Such records would include documentation of eligibility as a very small importer or importer of food from a very small foreign supplier, food and foreign supplier compliance status reviews, written assurances from foreign suppliers, and documentation of corrective actions.

N. Food From Countries With Officially Recognized or Equivalent Food Safety Systems (Proposed § 1.513)

Proposed § 1.513 answers the question, ''What FSVP may I have if I am importing a food from a country with an officially recognized or equivalent food safety system?'' Proposed § 1.513 addresses the circumstances under which importers would be subject to modified FSVP requirements for food from a country whose food safety system we have officially recognized as comparable to that of the United States (e.g., through a signed systems recognition arrangement or other agreement between FDA and the country officially recognizing the foreign food safety system) or that we have determined to be equivalent to that of the United States, for foods under FDA's jurisdiction. We are developing an approach for systems recognition involving assessing the food safety system of a foreign country and determining whether the system may be deemed comparable to that of the United States.

1. Bilateral and International Efforts To Enhance FDA's Food Safety Capability

FDA is developing several complementary tools to assess countries' food safety systems (or parts of these systems) that are specific to countries' particular interests and the maturity of their regulatory systems. Food safety authorities in other countries may wish to have FDA assess their food safety systems in their entirety through systems recognition (discussed in section II.N.2 of this document), or they may pursue assessments of their food safety controls and oversight for particular export products through FDA's future third-party accreditation program (see the proposed rule published elsewhere in this issue of the **Federal Register**). Additionally, we will continue our longstanding practice of entering into commodity-specific arrangements and agreements with regulatory authorities in other countries to help ensure that specific commodities imported to the United States are safe.

An example of FDA's ongoing efforts involving commodity-specific arrangements is the establishment of memoranda of understanding (MOUs) covering molluscan shellfish. Countries with which FDA has signed molluscan shellfish MOUs include Canada, Mexico, South Korea, and New Zealand. Shellfish processors certified by competent authorities in these countries are listed on the Interstate Certified Shellfish Shippers List (ICSSL). U.S. importers may use the ICSSL to meet their requirements under FDA's seafood HACCP regulations.2. FDA's Systems Recognition Assessment Program

FDA is developing a program for conducting food safety systems recognition assessments to, among other things, assist us with setting our food safety regulatory priorities. Systems recognition is one tool that FDA can use to incorporate the efforts of foreign food safety systems into our risk-based decision making regarding inspections, monitoring, admissibility, and outbreak response. Another tool is accreditation of foreign governments to audit and certify foreign food facilities and foods offered for import into the United States. Because the national food safety control systems in place in different countries are unique, have varying outcomes, and differ in their approaches to providing assurances of the safety of exported food, we plan to work with competent authorities in different countries to determine which tools might be most appropriate for different systems and/or commodities. Our use of systems recognition will not preclude the use of other tools to help ensure the safety of imported food; rather, to the extent possible, we will use a variety of tools to leverage the work done by foreign food safety authorities to facilitate this effort.

We envision a systems recognition assessment as a process for determining that (1) a country's food safety system provides a similar, though not identical, system of protections as the U.S. food safety system, and (2) the country's food safety authority provides similar oversight and monitoring activities for food produced under its jurisdiction. Systems recognition is based on the conclusion that food safety systems with similar elements and similar levels of oversight lead to similar food safety outcomes.

A public hearing on systems recognition, which at the time was termed ''comparability,'' was held in March 2011, and a transcript of the hearing is posted on FDA's Web site at *http://www.fda.gov/Food/NewsEvents/WorkshopsMeetingsConferences/ucm243781.htm*. We conducted a systems recognition assessment pilot project with New Zealand and signed a systems recognition arrangement with that country in December 2012. Information regarding this pilot project

and outcomes can be found on FDA's Web site at *http://www.fda.gov/Food/NewsEvents/ConstituentUpdates/ucm331276.htm.* Neither the FD&C Act nor FSMA explicitly mentions systems recognition. While the concept of systems recognition, the development of assessment tools, and the launching of the systems recognition pilot were initiated before the enactment of FSMA, systems recognition is consistent with several of the principles of FSMA, including a preventive approach to food safety, leveraging of resources to help ensure the safety of domestic and imported foods, and the development of enhanced regulatory partnerships.

The systems recognition initiative supports FDA strategies to accomplish Agency goals in our global approach to food safety regulation, as outlined in the Commissioner's June 2011 report on the ''Pathway to Global Product Safety and Quality'' (Ref. 2). The systems recognition initiative focuses on creating global coalitions of regulators, building global data-information systems and networks, expanding capabilities in intelligence gathering and use (through the use of risk analytics and modernized information technology), and leveraging efforts of government authorities. In an era when the amount of food traded internationally increases annually, systems recognition will serve as a key tool for FDA to build partnerships, leverage resources, and strengthen international food safety.

As currently structured, FDA's systems recognition assessment process involves a review of a country's food safety system by a team of FDA scientists, auditors, and investigators. The process includes a review of the elements of the country's food safety programs, including any export-specific programs. We are developing processes and procedures for conducting systems recognition assessments. The draft International Comparability Assessment Tool (ICAT) is a self-assessment tool that, along with analyses of compliance information, in-country assessments, and other information, will help us determine whether a country has a food safety system that is comparable to that of the United States. The ICAT provides an objective framework in which to assess certain factors affecting the effectiveness of a country's food safety system. These factors are a country's regulatory foundation, training program, inspection program, program assessment and audit program, control of food-related illness and outbreaks (including trace-back and emergency preparedness systems), compliance and enforcement, industry and community relations, program resources, international communication and harmonization, and laboratory support. Using lessons learned in the New Zealand pilot, we have revised and updated the ICAT (including by adding a reference guide for countries to use as they complete the self-assessment), and we have initiated a second pilot assessment project with Canada.

A systems recognition assessment consists of two principal stages. After satisfactory completion of a documentation review of a country's ICAT submission, audit teams from FDA, including persons specializing in particular high-risk commodities, will perform an in-country assessment to verify the implementation of programs and measures as outlined in the ICAT submission. The assessments provide an objective and comprehensive means of assessing the level of assurance that the foreign food safety authority can provide that food produced in that country is as safe as food produced in the United States. An assessment also will incorporate data from the country's food safety system (e.g., review of the regulatory performance of the food safety authority and hazard monitoring databases) as well as data collected by FDA (e.g., through border examinations, notifications/recalls, and foreign audits and inspections). After successful completion of documentation and in-country reviews, FDA may determine that a country's food safety system is ''comparable.'' If so, we intend to officially recognize the country's food safety system through a formal mechanism, such as establishing a systems recognition arrangement with the relevant food safety authority of the country. We expect to determine whether a country's food safety system continues to be comparable through open bilateral communications and periodic review. The specific process for periodic review is still in development as we establish the operational details of this new program.

We intend to leverage the work being done by food safety authorities in countries whose food safety systems we have officially recognized to enhance our capabilities in ensuring the safety of imported foods. Systems recognition arrangements and other agreements establishing official recognition will not be static, but rather will serve as the basis for ongoing exchange and partnership, and will be reviewed and updated as appropriate. These arrangements are likely to also involve provisions for enhanced information exchange (e.g., inspection findings) and emergency response partnerships.

3. Equivalency

In addition to food imported from foreign suppliers in countries with officially recognized food safety systems, proposed § 1.513 addresses food imported from suppliers in countries whose food safety systems are determined to be ''equivalent.'' In 1998, the United States and the European Union (EU) signed the Agreement between the European Community and the United States of America on Sanitary Measures to Protect Public and Animal Health in Trade in Live Animals and Animal Products, known as the Veterinary Equivalency Agreement (VEA) (Ref. 12). Due to the complexity of determining equivalence, FDA and its EU counterpart thus far have been unable to conclude that there is full equivalence with respect to the FDA-regulated products that fall within the scope of the VEA.

FDA has found equivalence determinations, under the VEA and otherwise, to be technically difficult and resource intensive. Equivalence determinations have involved a review of each measure (e.g., laws, regulations, requirements, procedures, processes, production methods) in place in each country to determine whether the exporting country meets the importing country's level of protection associated with each measure. In an effort to achieve efficiencies in the review of food safety systems, we are considering how to achieve similar objectives using the systems recognition approach.

4. Proposed Provisions on Importation of Food From Countries With Officially Recognized or Equivalent Food Safety Systems

Under proposed § 1.513, the importation of food from a foreign supplier in, and under the regulatory oversight of, a country whose food safety system FDA has officially recognized as comparable to that of the United States (e.g., when FDA and the other country have signed a systems recognition arrangement or other agreement establishing official recognition of the foreign food safety system) or that FDA has determined to be equivalent to that of the United States would be subject to modified FSVP requirements when certain conditions are met and documented. These conditions are that (1) the foreign supplier must be in, and under the regulatory oversight of, a country whose food safety system FDA has officially recognized as comparable or determined to be equivalent, and (2) the food must be within the scope of the relevant

official recognition or equivalency determination.

When these conditions are met, the importer would be required to determine and document whether the foreign supplier of the food is in good compliance standing with the food safety authority of the country in which the foreign supplier is located.

Proposed § 1.513(a) states that if an importer meets the conditions and requirements of § 1.513(b) for a food that it is importing, the importer is not required to comply with the requirements in §§ 1.503 through 1.508 (except § 1.506(a) (concerning listing of foreign suppliers)). As such, the importer would not be required to, for example, conduct a hazard analysis (§ 1.505) or the standard supplier verification (§ 1.506). Proposed § 1.513(a) further states that the importer would still be required to comply with the requirements in §§ 1.506(a), 1.509 (concerning identification of the importer at entry), and 1.510 (concerning records).

Proposed § 1.513(b)(1) would require an importer, before importing a food from the foreign supplier and annually thereafter, to document that the foreign supplier is in, and under the regulatory oversight of, a country whose food safety system FDA has officially recognized as comparable or determined to be equivalent to that of the United States and that the food is within the scope of FDA's official recognition or equivalency determination regarding the food safety authority of the country in which the foreign supplier is located. For example, if we completed an equivalence determination for grade A dairy products with country ''X'', proposed § 1.513 would not apply to the importation of other products from that country.

Proposed § 1.513(b)(2) would require an importer, before importing a food from the foreign supplier, to determine and document whether the foreign supplier is in good compliance standing, as defined in proposed § 1.500, with the food safety authority of the country in which the foreign supplier is located. The importer would be required to continue to monitor whether the foreign supplier is in good compliance standing and promptly review any information obtained. If the information indicated that food safety hazards associated with the food were not being adequately controlled, the importer would be required to take prompt corrective action. The appropriate corrective action would depend on the circumstances but could include discontinuing use of the foreign supplier. Proposed § 1.513(b)(2) also would require the importer to document any corrective actions that it undertakes.

As defined in proposed § 1.500, good compliance standing with a foreign food safety authority would mean that the foreign supplier (1) appears on the current version of a list, issued by the food safety authority of the country in which the foreign supplier is located and which has regulatory oversight of the supplier, of establishments that are in good compliance standing with the food safety authority, or (2) has otherwise been designated by such food safety authority as being in good compliance standing. Because it is possible that not all countries whose food safety systems we have officially recognized as comparable or determined to be equivalent may choose to maintain a list of food manufacturers that are in good compliance standing, we believe it is appropriate to provide for the possibility that countries may use other methods to designate food manufacturers as being in good compliance standing. We request comment on what should constitute good compliance standing under proposed § 1.513, as well as what documents or other information issued by a food safety authority should be acceptable to demonstrate that a foreign supplier of a food is in good compliance standing with that food safety authority.

We request comment on the appropriateness of our proposed modified FSVP requirements for food imported from a foreign supplier in, and under the regulatory oversight of, a country whose food safety system we have officially recognized as comparable or determined to be equivalent to that of the United States, including the proposed conditions and modified FSVP requirements that would be applicable to such imported food.

As described in section II.N.1 of this document, the establishment of commodity-specific arrangements and agreements provides FDA and foreign governments with an important tool, in addition to systems recognition and the use of accredited third-party auditors, for leveraging work done by food safety authorities in those countries. The selection of the most appropriate tool for a particular country and/or a particular commodity will be made by FDA in consultation with the food safety authority of the particular country. Important factors affecting this decision include the volume of food and types of commodities that a country exports to the United States and the regulatory structure of the foreign country. We request comment on what FSVP requirements might be appropriate for food imported from countries whose food safety authorities have entered into commodity-specific arrangements or agreements with FDA.

As discussed elsewhere in this document, the Preventive Controls Proposed Rule seeks comment on what requirements might be appropriate with respect to supplier approval and verification programs for raw materials and ingredients. Any such requirements would likely apply regardless of whether the supplier is located in the United States or in another country and, therefore, would apply regardless of the level of government oversight. In light of this, we request comment on whether it would be appropriate for the modified requirements in proposed § 1.513 of the FSVP regulations to be applicable to the importation of raw materials and ingredients.

O. Consequences of Failure To Comply (Proposed § 1.514)

Proposed § 1.514 answers the question, ''What are some consequences of failing to comply with the requirements of this subpart?'' This section addresses certain circumstances related to noncompliance with the FSVP regulations under which we may refuse admission of certain foods. In addition, this section codifies the provision in FSMA designating as a prohibited act the importation of a food without an appropriate FSVP.

Proposed § 1.514(a) states that an article of food is subject to refusal of admission under section 801(a)(3) of the FD&C Act if it appears that the importer of that food fails to comply with subpart L with respect to that food. This provision incorporates into the regulations section 301(c) of FSMA, which amended section 801(a) of the FD&C Act.

Proposed § 1.514(a) further states that if an article of food has not been sold or consigned to a person in the United States at the time the food is offered for entry into the United States, the article of food may not be imported into the United States unless the foreign owner or consignee has designated a U.S. agent or representative as the importer for the purposes of the definition of ''importer'' in § 1.500. We tentatively conclude that when no designation has been made under section 805(a)(2)(B) of the FD&C Act, the ''importer'' for the purposes of refusal of admission in accordance with section 301(c) of FSMA is the foreign owner or consignee.

Proposed § 1.514(b) states that the importation or offering for importation into the United States of an article of food by an importer without having an FSVP that meets the requirements of section 805 of the FD&C Act, including

the requirements of subpart L, is prohibited under section 301(zz) of the FD&C Act. This provision incorporates into the regulations section 301(b) of FSMA, which amended section 301 of the FD&C Act.

Regardless of whether an importer is in compliance with the FSVP requirements, the food or the importer might still be in violation of other applicable requirements. For example, if the food was nonetheless adulterated or misbranded, it could not be introduced or delivered for introduction into interstate commerce under section 301(a) of the FD&C Act and it would be subject to refusal of admission under section 801(a) of the FD&C Act. The FSVP regulations would not limit FDA's ability to take action to ensure that noncompliant food does not reach consumers.

III. Preliminary Regulatory Impact Analysis

A. Overview

We have examined the impacts of this proposed rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). We have developed a preliminary regulatory impact analysis (PRIA) that presents the benefits and costs of this proposed rule (along with the benefits and costs of the proposed rule on ''Accreditation of Third-Party Auditors/Certification Bodies to Conduct Food Safety Audits and to Issue Certifications,'' Docket No. FDA–2011–N–0146) (Ref. 13). We believe that the proposed rule is a significant regulatory action as defined by Executive Order 12866. We request comment on the PRIA.

The summary analysis of benefits and costs included in the Executive Summary of this document is drawn from the detailed PRIA, which is available at *http://www.regulations.gov* (enter Docket No. FDA–2011–N–0143), and is also available on FDA's Web site at *http://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm.*

B. Regulatory Flexibility Act

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because many small businesses will need to adopt FSVPs or conduct additional verification activities, we acknowledge that the final rule resulting from this proposed rule will have a significant economic impact on a substantial number of small entities.

C. Small Business Regulatory Enforcement Fairness Act of 1996

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) defines a major rule for the purpose of congressional review as having caused or being likely to cause one or more of the following: An annual effect on the economy of $100 million or more; a major increase in costs or prices; significant adverse effects on competition, employment, productivity, or innovation; or significant adverse effects on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. In accordance with the Small Business Regulatory Enforcement Fairness Act, the Office of Management and Budget (OMB) has determined that this proposed rule is a major rule for the purpose of congressional review.

D. Unfunded Mandates Reform Act of 1995

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $136 million, using the most current (2010) Implicit Price Deflator for the Gross Domestic Product. We expect that the proposed rule will result in a 1-year expenditure that would exceed this amount.

E. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in the proposed rule have been submitted to OMB for review under section 3507(d) of the Paperwork Reduction Act. We invite comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

To ensure that comments on information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the title ''Foreign Supplier Verification Programs for Importers of Food for Humans and Animals.''

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3407(d)), the Agency has submitted the information collection provisions of this proposed rule to OMB for review. These requirements will not be effective until FDA obtains OMB approval. We will publish a notice concerning OMB approval of these requirements in the **Federal Register**.

F. Public Access to the Analyses

The analyses that FDA has performed to examine the impacts of this proposed rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act, the Unfunded Mandates Reform Act of 1995, and the Paperwork Reduction Act of 1995 are available to the public in the docket for this proposed rule (Ref. 13).

IV. Analysis of Environmental Impact

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

V. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. We have determined that the proposed rule, if finalized, would not contain policies that would have substantial direct effects on the States, on the relationship between the National Government and

the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we tentatively conclude that the proposed rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

VI. Proposed Effective and Compliance Dates

We propose that any final rule on FSVPs become effective 60 days after the date on which it is published in the **Federal Register**. Section 301(d) of FSMA states that the amendments to the FD&C Act made by section 301—i.e., section 805 of the FD&C Act concerning FSVPs—shall take effect 2 years after the date of the enactment of FSMA, i.e., on January 4, 2013. Although section 805 took effect on January 4, 2013, we intend to require importers to comply with section 805 in accordance with the effective and compliance dates that will be established when we finalize the rule implementing section 805.

Although we are proposing that the FSVP final rule become effective 60 days after the date of publication in the **Federal Register**, we are proposing to provide additional time before importers would be required to come into compliance. In general, the compliance date would be 18 months after the publication date of the final FSVP regulations. We believe this would give importers enough time to make changes to their business practices that would be needed to come into compliance with the various requirements we are proposing.

We are proposing exceptions to this approach that would provide different compliance dates applicable to the importation of food that is the subject of certain regulations that are currently in development—specifically, the proposed regulations on preventive controls for human food (as well as the future proposed regulations on preventive controls for animal food) and the proposed regulations on produce safety. In the Preventive Controls Proposed Rule, we proposed a compliance date for the preventive controls regulations of 1 year after the date of publication of the final rule, with an additional 1 year for small businesses and an additional 2 years for very small businesses (78 FR 3646 at 3674). (We anticipate that we will issue the final rules on preventive controls for human food and preventive controls for animal food on the same date, and that these regulations will share the same effective and compliance dates.)

Regarding the FSVP provisions, we are proposing that, with respect to a particular food, the importer be required to comply with the FSVP regulations 6 months after the foreign supplier of the food is required to comply with the preventive controls regulations (i.e., 6 months after the applicable compliance date for the supplier under those regulations). Our goal is to avoid a situation in which an importer would be required to develop an FSVP for a food from a particular supplier and then be required to revise this FSVP shortly thereafter once the supplier is subject to the preventive controls regulations. Because different foreign suppliers will be required to comply with those regulations at different times (e.g., based on the size of the firm), our proposed compliance dates for FSVP would be staggered depending on who the importer's supplier or suppliers are.

Some foreign suppliers that are farms would be subject to the new standards for produce safety that we have proposed to establish in part 112. Importers will not be certain which farm suppliers are covered by the produce safety standards or when a foreign supplier will be required to comply with the standards until a final produce safety rule is issued. If importers are required to conduct verification activities before a farm is subject to the produce rule, some importers could be required to change their verification activities for the supplier after the produce rule is in effect because, for example, the produce rule will establish food safety regulations that must be considered in any audit. RACs that are not fruits or vegetables would not be covered by the produce rule. Nonetheless, waiting to implement the FSVP requirements for all RACs from farms until after the produce safety rule is effective will facilitate implementation.

In light of these circumstances, we believe that it is reasonable to stagger the compliance dates for FSVP activities for RACs from farms as follows:

- The compliance date for an importer to comply with the FSVP regulations with respect to a RAC from a farm would be 18 months after the publication date of the final rule or 6 months after the date on which the supplier must be in compliance with the produce safety regulations, whichever is later.
- If the foreign supplier is not subject to the produce safety regulations, the compliance date for an importer to comply with the FSVP regulations with respect to a RAC received from a farm would be 18 months after the publication date of the final rule or 6 months after the effective date of the produce final rule, whichever is later. This approach would ensure that the receiving facility would be able to know whether the farm supplier is subject to the produce safety regulations before choosing any appropriate verification activities.

We request comment on our proposed approach to compliance dates.

VII. Comments

We invite public comment on the matters specified in this document as well as any other matters concerning the proposed FSVP regulations that are of interest. As previously stated, we issued the Preventive Controls Proposed Rule and the Produce Safety Proposed Rule on January 14, 2013. We understand that many persons who are directly affected by, or otherwise interested in, those proposed regulations also are affected by, or interested in, the proposed FSVP regulations, and that aspects of the FSVP proposed rule might affect views regarding the previously issued rules. To address these concerns, on April 26, 2013, we issued documents in the **Federal Register** (78 FR 24691 and 24692) extending the comment periods on the preventive controls and produce safety proposed rules to September 16, 2013, to allow additional time for interested persons to consider the potential impact of the proposed FSVP regulations on those rules.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

VIII. References

The following references have been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (We have verified the Web site addresses, but we are not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

1. U.S. Food and Drug Administration, ''Annual Report to Congress on Food Facilities, Food Imports, and FDA Foreign Offices Provisions of the FDA Food Safety and Modernization Act,''

August 2012 (*http://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm315486.htm*
2. U.S. Food and Drug Administration, ''Pathway to Global Product Safety and Quality,'' July 2011 (*http://www.fda.gov/AboutFDA/CentersOffices/OfficeofGlobalRegulatoryOperationsandPolicy/GlobalProductPathway/default.htm*).
3. Centers for Disease Control and Prevention, Multistate Foodborne Outbreaks (*http://www.cdc.gov/outbreaknet/outbreaks.html*).
4. The WTO Agreement on the Application of Sanitary and Phytosanitary Measures (*http://www.wto.org/english/tratop_e/sps_e/spsagr_e.htm*).
5. Notification to World Trade Organization, Committee on Sanitary and Phytosanitary Measures, G/SPS/N/USA/2156, February 14, 2011 (*https://docs.wto.org/imrd/directdoc.asp?DDFDocuments/t/G/SPS/NUSA2156.DOC*).
6. Codex Committee on Food Import and Export Inspection and Certification Systems; Guidelines for Food Import Control Systems (CAC/GL 47–2003) (*http://www.codexalimentarius.net/download/standards/10075/CXG_047e.pdf*)
7. U.S. Government Accountability Office (GAO), ''Seafood Safety: FDA Needs to Improve Oversight of Imported Seafood and Better Leverage Limited Resources'' (GAO–11–286), April 2011 (*http://www.gao.gov/new.items/d11286.pdf*).
8. National Advisory Committee on Microbiological Criteria for Foods (NACMCF), 1998, Hazard Analysis and Critical Control Point Principles and Application Guidelines, *Journal of Food Protection,* 61:1246–1259 (*http://www.fda.gov/Food/GuidanceRegulation/HACCP/ucm2006801.htm*).
9. Codex Alimentarius Committee (CAC), 2003, General Principles of Food Hygiene (CAC/RCP 1–1969) (rev. 4–2003) (*http://www.codexalimentarius.net/download/standards/23/CXP_001e.pdf*).
10. Grocery Manufacturers Association (GMA), Food Supply Chain Handbook, April 18, 2008 (*http://gmaonline.org/downloads/technical-guidance-and-tools/GMA_SupplyChain2.pdf*).
11. The Global Food Safety Initiative (GFSI), GFSI Guidance Document, Version 6.2 (*http://www.mygfsi.com/gfsifiles/Overview_GFSI_Guidance_Document_Sixth_Edition_Version_6.2.pdf*).
12. Agreement between the European Community and the United States of America on Sanitary Measures to Protect Public and Animal Health in Trade in Live Animals and Animal Products (*http://ec.europa.eu/world/agreements/downloadFile.do?fullText=yes&treatyTransId=751*).
13. U.S. Food and Drug Administration, 2013, ''Preliminary Regulatory Impact Analysis,'' Docket Nos. FDA–2011–N–0143, Foreign Supplier Verification Programs for Importers of Food for Humans and Animals, and FDA–2011–N–0146, Accreditation of Third-Party Auditors/Certification Bodies to Conduct Food Safety Audits and to Issue Certifications. (*http://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm*).

List of Subjects in 21 CFR Part 1

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

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 1 be amended as follows:

PART 1—GENERAL ENFORCEMENT REGULATIONS

■ 1. The authority citation for 21 CFR part 1 is revised to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 19 U.S.C. 1490, 1491; 21 U.S.C. 321, 331, 332, 333, 334, 335a, 343, 350c, 350d, 352, 355, 360b, 362, 371, 374, 381, 382, 384a, 393; 42 U.S.C. 216, 241, 243, 262, 264.

■ 2. Add subpart L, consisting of §§ 1.500 through 1.514 to read as follows:

Subpart L—Foreign Supplier Verification Programs for Food Importers

Sec.

1.500 What definitions apply to this subpart?
1.501 To what foods do the regulations in this subpart apply?
1.502 What foreign supplier verification program (FSVP) must I have?
1.503 Who must develop my FSVP and perform FSVP activities?
1.504 What review of a food and foreign supplier's compliance status must I conduct?
1.505 What hazard analysis must I conduct?
1.506 What foreign supplier verification and related activities must I conduct?
1.507 What investigations and corrective actions must I conduct under my FSVP?
1.508 How must I reassess the effectiveness of my FSVP?
1.509 How must the importer be identified at entry?
1.510 How must I maintain records of my FSVP?
1.511 What FSVP must I have if I am importing a food subject to certain dietary supplement current good manufacturing practice regulations?
1.512 What FSVP may I have if I am a very small importer or I am importing from a very small foreign supplier?
1.513 What FSVP may I have if I am importing a food from a country with an officially recognized or equivalent food safety system?
1.514 What are some consequences of failing to comply with the requirements of this subpart?

Subpart L—Foreign Supplier Verification Programs for Food Importers

§ 1.500 What definitions apply to this subpart?

The following definitions apply to words and phrases as they are used in this subpart. Other definitions of these terms may apply when they are used in other subparts of this part.

Adequate means that which is needed to accomplish the intended purpose in keeping with good public health practice.

Audit means the systematic, independent, and documented examination (through observation, investigation, records review, and, as appropriate, sampling and laboratory analysis) to assess a foreign supplier's food safety processes and procedures.

Dietary supplement has the meaning given in section 201(ff) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(ff)).

Dietary supplement component means any substance intended for use in the manufacture of a dietary supplement, including those that may not appear in the finished batch of the dietary supplement. Dietary supplement components include dietary ingredients (as described in section 201(ff) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(ff)) and other ingredients.

Food has the meaning given in section 201(f) of the Federal Food, Drug, and Cosmetic Act, except that food does not include pesticides as defined in 7 U.S.C. 136(u).

Food allergen means a major food allergen as defined in section 201(qq) of the Federal Food, Drug, and Cosmetic Act.

Foreign supplier means, for an article of food, the establishment that manufactures/processes the food, raises the animal, or harvests the food that is exported to the United States without further manufacturing/processing by another establishment, except for further manufacturing/processing that consists solely of the addition of labeling or any similar activity of a de minimis nature.

Good compliance standing with a foreign food safety authority means that the foreign supplier—

(1) Appears on the current version of a list, issued by the food safety authority of the country in which the foreign supplier is located and which has regulatory oversight of the supplier, of food manufacturers and processors that are in good compliance standing with the food safety authority, or

(2) Has otherwise been designated by such food safety authority as being in good compliance standing.

Hazard means any biological, chemical, physical, or radiological agent that is reasonably likely to cause illness or injury in the absence of its control.

Hazard reasonably likely to occur means a hazard for which a prudent importer would establish controls or verify that the supplier controls because experience, illness data, scientific reports, or other information provides a basis to conclude that there is a reasonable possibility that the hazard will occur in the type of food being imported in the absence of those controls.

Importer means the person in the United States who has purchased an article of food that is being offered for import into the United States. If the article of food has not been sold to a person in the United States at the time of U.S. entry, the importer is the person in the United States to whom the article has been consigned at the time of entry. If the article of food has not been sold or consigned to a person in the United States at the time of U.S. entry, the importer is the U.S. agent or representative of the foreign owner or consignee at the time of entry.

Lot means the food produced during a period of time indicated by a specific code.

Manufacturing/processing means making food from one or more ingredients, or synthesizing, preparing, treating, modifying, or manipulating food, including food crops or ingredients. Examples of manufacturing/processing activities are cutting, peeling, trimming, washing, waxing, eviscerating, rendering, cooking, baking, freezing, cooling, pasteurizing, homogenizing, mixing, formulating, bottling, milling, grinding, extracting juice, distilling, labeling, or packaging. For farms and farm mixed-type facilities, manufacturing/processing does not include activities that are part of harvesting, packing, or holding.

Packaging (when used as a verb) means placing food into a container that directly contacts the food and that the consumer receives.

Qualified individual means a person who has the necessary education, training, and experience to perform the activities needed to meet the requirements of this subpart. This person may be, but is not required to be, an employee of the importer. Regarding the performance of verification activities related to preventive controls implemented by the foreign supplier in accordance with section 418 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350g), a qualified individual must have successfully completed training in the development and application of risk-based preventive controls at least equivalent to that received under a standardized curriculum recognized as adequate by FDA or be otherwise qualified through job experience to develop and implement a food safety system. A qualified individual includes, but is not limited to, a third-party auditor that has been accredited in accordance with section 808 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 384d). A foreign government employee could be a qualified individual.

Raw agricultural commodity means ''raw agricultural commodity'' as defined in section 201(r) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(r)).

Very small foreign supplier means a foreign supplier, including any subsidiary, affiliate, or subsidiaries or affiliates, collectively, of any entity of which the foreign supplier is a subsidiary or affiliate, whose average annual monetary value of sales of food during the previous 3-year period (on a rolling basis) is no more than $500,000, adjusted for inflation.

Very small importer means an importer, including any subsidiary, affiliate, or subsidiaries or affiliates, collectively, of any entity of which the importer is a subsidiary or affiliate, whose average annual monetary value of sales of food during the previous 3-year period (on a rolling basis) is no more than $500,000, adjusted for inflation.

You means a person who is subject to some or all of the requirements in this subpart.

§ 1.501 To what foods do the regulations in this subpart apply?

(a) *General.* Except as specified otherwise in this section, the regulations in this subpart apply to all food imported or offered for import into the United States and to the importers of such food.

(b) *Exemption for certain juice and seafood products.* The regulations in this subpart do not apply with respect to juice, fish, and fishery products that are imported from a foreign supplier that is required to comply with, and is in compliance with, the regulations on juice in part 120 of this chapter or the regulations on fish and fishery products in part 123 of this chapter. If you import juice or fish and fishery products that are subject to the regulations in part 120 or part 123 of this chapter, respectively, you must comply with the requirements applicable to importers of those products under § 120.14 or § 123.12 of this chapter, respectively.

(c) *Exemption for food imported for research or evaluation.* The regulations in this subpart do not apply to food that is imported for research or evaluation use, provided that such food is not intended for retail sale and is not sold or distributed to the public, that it is labeled with the statement ''Food for research or evaluation use,'' and that, when filing entry with U.S. Customs and Border Protection, the customs broker or filer for the food provides an electronic declaration that the food will be used for research or evaluation purposes and will not be sold or distributed to the public. Food is imported for research or evaluation purposes only if it is imported in a small quantity that is consistent with a research, analysis, or quality assurance purpose and the entire quantity is used for this purpose.

(d) *Exemption for food imported for personal consumption.* The regulations in this subpart do not apply to food that is imported for personal consumption, provided that such food is not intended for retail sale and is not sold or distributed to the public. Food is imported for personal consumption only if it is purchased or otherwise acquired by a person in a small quantity that is consistent with a non-commercial purpose and is not sold or distributed to the public.

(e) *Exemption for alcoholic beverages.* (1) The regulations in this subpart do not apply with respect to alcoholic beverages that are imported from a foreign supplier that is a facility that meets the following two conditions:

(i) Under the Federal Alcohol Administration Act (27 U.S.C. 201 et seq.) or chapter 51 of subtitle E of the Internal Revenue Code of 1986 (26 U.S.C. 5001 et seq.), the facility is a foreign facility of a type that, if it were a domestic facility, would require obtaining a permit from, registering with, or obtaining approval of a notice or application from the Secretary of the Treasury as a condition of doing business in the United States; and

(ii) Under section 415 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350d), the facility is required to register as a facility because it is engaged in manufacturing/processing one or more alcoholic beverages.

(2) The regulations in this subpart do not apply with respect to food other than alcoholic beverages that is imported from a foreign supplier described in paragraph (e)(1) of this section, provided such food:

(i) Is in prepackaged form that prevents any direct human contact with such food; and

(ii) Constitutes not more than 5 percent of the overall sales of the facility, as determined by the Secretary of the Treasury.

(f) *Inapplicability to food that is transshipped or imported for further processing and export.* The regulations in this subpart do not apply to food:

(1) That is transshipped through the United States to another country; or

(2) That is imported for future export and that is neither consumed nor distributed in the United States.

§ 1.502 What foreign supplier verification program (FSVP) must I have?

(a) *General.* Except as specified in paragraph (b) of this section, for each food you import, you must develop, maintain, and follow an FSVP that provides adequate assurances that your foreign supplier is producing the food in compliance with processes and procedures that provide at least the same level of public health protection as those required under section 418 (regarding hazard analysis and risk-based preventive controls for certain foods) or 419 (regarding standards for produce safety), if either is applicable, and is producing the food in compliance with sections 402 (regarding adulteration) and 403(w) (regarding misbranding with respect to labeling for the presence of major food allergens) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350g, 350h, 342, and 343(w)).

(b) *Low-acid canned foods.* With respect to those microbiological hazards that are controlled by part 113 of this chapter, if you import a thermally processed low-acid canned food packaged in a hermetically sealed container, you must verify and document that the food was produced in accordance with part 113 of this chapter. With respect to all matters that are not controlled by part 113 of this chapter, you must have an FSVP as specified in paragraph (a) of this section.

§ 1.503 Who must develop my FSVP and perform FSVP activities?

Except with respect to the requirements in §§ 1.506(a), 1.509, 1.510, 1.511(c)(2), and 1.512(b)(3) and (6), a qualified individual must develop your FSVP and perform each of the activities required under this subpart.

§ 1.504 What review of a food and foreign supplier's compliance status must I conduct?

Before importing a food from a foreign supplier, you must review the compliance status of the food and the foreign supplier, including whether they are the subject of an FDA warning letter, import alert, or requirement for certification issued under section 801(q) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381(q)) relating to the safety of the food, to determine whether it would be appropriate to import the food from the foreign supplier. You must document this review. You must continue to monitor and document the compliance status as long as you import the food from the foreign supplier.

§ 1.505 What hazard analysis must I conduct?

(a) *Requirement of a hazard analysis.* Except as permitted under paragraphs (d) and (e) of this section, for each food you import, you must determine the hazards, if any, that are reasonably likely to occur with the food and, for each, the severity of the illness or injury if such a hazard were to occur. You must document this determination and use it to determine appropriate verification activities in accordance with § 1.506.

(b) *Potential hazards.* Your evaluation of the hazards that are reasonably likely to occur with each food you import must consider hazards that may occur naturally or may be unintentionally introduced, including the following:

(1) Biological hazards, including microbiological hazards such as parasites and environmental pathogens, and other microorganisms of public health significance;

(2) Chemical hazards, including substances such as pesticide and drug residues, natural toxins, decomposition, unapproved food or color additives, and food allergens;

(3) Physical hazards; and

(4) Radiological hazards.

(c) *Hazard evaluation.* In evaluating the hazards set forth in paragraph (b) of this section, you must consider the effect of the following on the safety of the finished food for the intended consumer:

(1) The ingredients of the food;

(2) The condition, function, and design of the foreign supplier's establishment and equipment;

(3) Transportation practices;

(4) Harvesting, raising, manufacturing, processing, and packing procedures;

(5) Packaging and labeling activities;

(6) Storage and distribution;

(7) Intended or reasonably foreseeable use;

(8) Sanitation, including employee hygiene; and

(9) Any other relevant factors.

(d) *Review of hazard analysis developed by foreign supplier.* If your foreign supplier has conducted a hazard analysis for the food, you may identify the hazards that are reasonably likely to occur for a particular food by reviewing and evaluating the hazard analysis conducted by the foreign supplier. You must document the determination you make based on this review and evaluation.

(e) *Microbiological hazards in raw agricultural commodities that are fruits or vegetables.* If you are importing a raw agricultural commodity that is a fruit or vegetable, you are not required to conduct a hazard analysis regarding microbiological hazards that might be reasonably likely to occur with such food.

§ 1.506 What foreign supplier verification and related activities must I conduct?

(a) *List of foreign suppliers.* You must maintain a written list of foreign suppliers from which you are importing food.

(b) *Foreign supplier verification procedures.* You must establish and follow adequate written procedures for conducting foreign supplier verification activities with respect to the foods you import.

(c) *Purpose of supplier verification.* Except with respect to verification activities specified in paragraph (h) of this section concerning raw agricultural commodities that are fruits or vegetables and that are subject to part 112 of this chapter, your foreign supplier verification activities must provide adequate assurances that the hazards you have identified as reasonably likely to occur are adequately controlled.

(d) *No hazards identified.* If you conduct your hazard analysis in accordance with § 1.505 and determine that there are no hazards that are reasonably likely to occur with a food you import, you are only required to comply with paragraph (a) of this section with respect to this food. This paragraph does not apply if the food is a raw agricultural commodity that is a fruit or vegetable and that is subject to part 112 of this chapter.

(e) *Hazards controlled by you.* For a hazard that you have identified as reasonably likely to occur with a food you import that you adequately control, you must document, at least annually, that you have established and are following procedures that adequately control the hazard.

(f) *Hazards controlled by your customer.* For a hazard that you have identified as reasonably likely to occur with a food you import that your customer adequately controls, you must document that your customer controls the hazard by obtaining written

assurance, at least annually, from the customer that it has established and is following procedures (identified in the written assurance) that adequately control the hazard.

Option 1 for Requirements for Hazards Not Controlled by You or Your Customer

(g) *Hazards controlled or verified by your foreign supplier.* For a hazard that you have identified as reasonably likely to occur with a food that is not controlled by you or your customer, you must conduct the verification activities in paragraph (g)(1) or (2) of this section, depending on the type of hazard.

(1) *Hazards controlled by your foreign supplier for which there is a reasonable probability that exposure to the hazard will result in serious adverse health consequences or death to humans or animals.* For a hazard to be controlled by your foreign supplier at its establishment for which there is a reasonable probability that exposure to the hazard will result in serious adverse health consequences or death to humans or animals, you must conduct and document the onsite auditing activities specified in paragraphs (g)(1)(i) and (ii) of this section for the hazard. When onsite auditing alone cannot provide adequate assurances that the hazard is adequately controlled, you must conduct one or more additional verification activities to provide such assurances.

(i) *Initial onsite audit.* You must conduct (and document) or obtain documentation of an onsite audit before importing the food from the foreign supplier.

(ii) *Subsequent periodic onsite audits.* You must conduct (and document) or obtain documentation of an onsite audit of the foreign supplier at least annually, unless more frequent onsite audits are necessary to adequately verify that the hazard is adequately controlled.

(2) *Other hazards.* For a hazard that you have identified as reasonably likely to occur with a food from a foreign supplier that is not specified in paragraph (g)(1) of this section, you must conduct one or more of the verification activities listed in paragraphs (g)(2)(i) through (iv) of this section before using or distributing the food and periodically thereafter. You must determine and document which verification activity or activities are appropriate to adequately verify that the hazard is adequately controlled. You must determine and document how frequently the verification activities must be conducted. In determining the appropriate verification activities and how frequently they should be conducted, you must consider the risk presented by the hazard and the food and foreign supplier's compliance status as reviewed under § 1.504.

(i) *Periodic onsite auditing.* You conduct (and document) or obtain documentation of a periodic onsite audit of your foreign supplier.

(ii) *Periodic or lot-by-lot sampling and testing of the food.* You conduct (and document) or obtain documentation (such as a certificate of analysis containing the results of the testing) from your foreign supplier of lot-by-lot or periodic sampling and testing of the food for the hazard.

(iii) *Periodic review of the foreign supplier's food safety records.* You periodically review (and document) or obtain documentation of a review of your foreign supplier's food safety records (such as records of your foreign supplier's audit of its supplier's hazard control activities).

(iv) *Other appropriate procedure.* You use any other procedure that you have established as being appropriate based on the risk associated with the hazard. You must document your use of any such procedure.

(3) *Requirements of onsite auditing.* An onsite audit conducted under this section must consider the FDA food safety regulations, if any, that apply to the food and foreign supplier and must include a review of the foreign supplier's written food safety plan, if any, for the hazard being audited and the supplier's implementation of such plan.

(4) *Substitution of inspection by FDA or an officially recognized or equivalent food safety authority.* Instead of an onsite audit conducted under paragraph (g) or (h) of this section, an importer may rely on the results of an inspection of the foreign supplier by FDA or the food safety authority of a country whose food safety system FDA has officially recognized as comparable or has determined to be equivalent to that of the United States, provided that the inspection was conducted within 1 year of the date that the onsite audit would have been required to be conducted. For inspections conducted by the food safety authority of a country whose food safety system FDA has officially recognized as comparable or determined to be equivalent, the food that is the subject of the onsite audit must be within the scope of the official recognition or equivalence determination, and the foreign supplier must be in, and under the regulatory oversight of, such country.

(5) *Review of results of verification activities.* You must promptly review the results of the verification activities that you conduct or obtain documentation of under paragraph (g) or (h) of this section. If the results show that the hazards identified as reasonably likely to occur with a food are not adequately controlled, you must take appropriate action in accordance with § 1.507(c).

(6) *Independence of qualified individuals conducting verification activities.* A qualified individual who conducts any of the verification activities set forth in paragraphs (g)(1), (g)(2), and (h) of this section must not have a financial interest in the foreign supplier and payment must not be related to the results of the activity. This does not prohibit you or one of your employees from conducting the verification activity.

Option 2 for Requirements for Hazards Not Controlled by You or Your Customer

(g) *Other hazards.* (1) For a hazard that you have identified as reasonably likely to occur with a food from a foreign supplier and that is not controlled by you or your customer, you must conduct one or more of the verification activities listed in paragraphs (g)(1)(i) through (iv) of this section before using or distributing the food and periodically thereafter. You must determine and document which verification activity or activities are appropriate to adequately verify that the hazard is adequately controlled. You must determine and document how frequently the verification activities must be conducted. In determining the appropriate verification activities and how frequently they should be conducted, you must consider the risk presented by the hazard, the probability that exposure to the hazard will result in serious adverse health consequences or death to humans or animals, and the food and foreign supplier's compliance status as reviewed under § 1.504.

(i) *Periodic onsite auditing.* You conduct (and document) or obtain documentation of a periodic onsite audit of your foreign supplier.

(ii) *Periodic or lot-by-lot sampling and testing of the food.* You conduct (and document) or obtain documentation (such as a certificate of analysis containing the results of the testing) from your foreign supplier of lot-by-lot or periodic sampling and testing of the food for the hazard.

(iii) *Periodic review of the foreign supplier's food safety records.* You periodically review (and document) or obtain documentation of a review of your foreign supplier's food safety records (such as records of your foreign

supplier's audit of its supplier's hazard control activities).

(iv) *Other appropriate procedure.* You use any other procedure that you have established as being appropriate based on the risk associated with the hazard. You must document your use of any such procedure.

(2) *Requirements of onsite auditing.* An onsite audit conducted under this section must consider the FDA food safety regulations, if any, that apply to the food and foreign supplier and must include a review of the foreign supplier's written food safety plan, if any, for the hazard being audited and the supplier's implementation of such plan.

(3) *Substitution of inspection by FDA or an officially recognized or equivalent food safety authority.* Instead of an onsite audit conducted under paragraph (g) or (h) of this section, an importer may rely on the results of an inspection of the foreign supplier by FDA or the food safety authority of a country whose food safety system FDA has officially recognized as comparable or has determined to be equivalent to that of the United States, provided that the inspection was conducted within 1 year of the date that the onsite audit would have been required to be conducted. For inspections conducted by the food safety authority of a country whose food safety system FDA has officially recognized as comparable or determined to be equivalent, the food that is the subject of the onsite audit must be within the scope of the official recognition or equivalence determination, and the foreign supplier must be in, and under the regulatory oversight of, such country.

(4) *Review of results of verification activities.* You must promptly review the results of the verification activities that you conduct or obtain documentation of under paragraph (g) or (h) of this section. If the results show that the hazards identified as reasonably likely to occur with a food are not adequately controlled, you must take appropriate action in accordance with § 1.507(c).

(5) *Independence of qualified individuals conducting verification activities.* A qualified individual who conducts any of the verification activities set forth in paragraphs (g)(1) and (h) of this section must not have a financial interest in the foreign supplier and payment must not be related to the results of the activity. This does not prohibit you or one of your employees from conducting the verification activity.

Option 1 for Importers of Certain Produce

(h) *Importers of certain produce.* For a raw agricultural commodity that is a fruit or vegetable and that is subject to part 112 of this chapter, in addition to the other requirements of this section, before importing the fruit or vegetable from the foreign supplier and at least annually thereafter, you must conduct or obtain documentation of an onsite audit that examines the control of microbiological hazards associated with the fruit or vegetable. Such audit must provide adequate assurances that your foreign supplier is producing the fruit or vegetable in accordance with processes and procedures that provide the same level of public health protection as those required under part 112 of this chapter. Such audits are subject to paragraphs (g)(3) through (6) of this section. An audit conducted under this paragraph may be conducted in conjunction with an audit, if any, that is required under paragraph (g) of this section.

Option 2 for Importers of Certain Produce

(h) *Importers of certain produce.* For a raw agricultural commodity that is a fruit or vegetable and that is subject to part 112 of this chapter, in addition to the other requirements of this section, before importing the fruit or vegetable from the foreign supplier and at least annually thereafter, you must conduct one or more of the verification activities listed in paragraphs (g)(1)(i) through (iv) of this section to provide adequate assurances that your foreign supplier is producing the fruit or vegetable in accordance with processes and procedures that provide the same level of public health protection as those required under part 112 of this chapter. An audit conducted under this paragraph is subject to paragraphs (g)(2) through (5) of this section. You may conduct an activity under this paragraph in conjunction with an activity that you conduct in accordance with paragraph (g)(1)(i) through (iv) of this section.

§ 1.507 What investigations and corrective actions must I conduct under my FSVP?

(a) You must promptly conduct a review of any customer, consumer, or other complaint that you receive to determine whether the complaint relates to the adequacy of your FSVP.

(b) If you become aware that an article of food you import is adulterated under section 402 or misbranded under section 403(w) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342 and 343(w)), either through review of a complaint or by other means, you must promptly investigate the cause or causes of such adulteration or misbranding. You must document any such investigation.

(c) You must promptly take appropriate corrective actions if you determine that a foreign supplier of food you import does not produce the food in compliance with processes and procedures that provide at least the same level of public health protection as those required under section 418 or 419 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350g or 350h), if either is applicable, or produces food that is adulterated under section 402 or misbranded under section 403(w) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342 and 343(w)). This determination could be based on an investigation conducted under paragraph (b) of this section, the verification activities you conduct under § 1.506 or § 1.511(c), the FSVP reassessment you conduct under § 1.508, or otherwise. The appropriate corrective actions will depend on the circumstances but could include discontinuing use of the foreign supplier until the cause or causes of noncompliance, adulteration, or misbranding have been adequately addressed. You must document any corrective actions you take in accordance with this paragraph.

(d) If you determine, by means other than your verification activities conducted under § 1.506 or § 1.511(c) or your FSVP reassessment conducted under § 1.508, that a foreign supplier of food that you import does not produce food in compliance with processes and procedures that provide at least the same level of public health protection as those required under section 418 or 419 of the Federal Food, Drug, and Cosmetic Act, if either is applicable, or produces food that is adulterated under section 402 or misbranded under section 403(w) of the Federal Food, Drug, and Cosmetic Act, you must promptly investigate to determine whether your FSVP is adequate and, when appropriate, modify your FSVP. You must document any investigations, corrective actions, and changes to your FSVP that you undertake in accordance with this paragraph.

(e) This section does not limit your obligations with respect to other laws enforced by FDA, such as those relating to product recalls.

§ 1.508 How must I reassess the effectiveness of my FSVP?

(a) *Timing.* (1) Except as specified in paragraph (a)(2) of this section, for each food you import, you must conduct a

reassessment of your FSVP for the food, as described in paragraph (b) of this section, within 3 years of establishing the FSVP and within 3 years of the last reassessment.

(2) You must promptly reassess the effectiveness of your FSVP for a food you import when you become aware of new information about potential hazards associated with the food.

(b) *Reassessment and implementation of changes.* In conducting a reassessment of your FSVP as required by paragraph (a) of this section, you must update your hazard analysis for the food in accordance with § 1.505. If the hazards you previously identified as reasonably likely to occur change as a result of the reassessment, you must promptly determine whether the verification activities you conduct under § 1.506 or § 1.511(c) need to be changed to comply with that section, and you must promptly implement any such changes. You must document each reassessment you conduct and any resulting changes to your FSVP.

§ 1.509 How must the importer be identified at entry?

(a) Before an article of food is imported or offered for import into the United States, the foreign owner or consignee of the food (if there is no U.S. owner or consignee) must designate a U.S. agent or representative as the importer of the food for the purposes of the definition of ''importer'' in § 1.500.

(b) You must obtain a Dun & Bradstreet Data Universal Numbering System (DUNS) number.

(c) You must ensure that, for each line entry of food product offered for importation into the United States, your name and DUNS number identifying you as the importer of the food is provided electronically when filing entry with U.S. Customs and Border Protection.

§ 1.510 How must I maintain records of my FSVP?

(a) *Records of FSVP.* You must sign and date records concerning your FSVP upon initial completion and upon any modification of the FSVP.

(b) *Record availability.* You must maintain records required under this subpart, in English, and make them available promptly to an authorized FDA representative, upon request, for inspection and copying. You must maintain records at your place of business or at a reasonably accessible location; records are considered to be at a reasonably accessible location if they can be immediately retrieved from another location by computer or other electronic means. If requested in writing by FDA, you must send records to the Agency electronically rather than making the records available for review at your place of business.

(c) *Record quality.* All records must be legible and stored to prevent deterioration or loss.

(d) *Record retention.* (1) Except as specified in paragraph (d)(2) of this section, you must maintain records referenced in this subpart until at least 2 years after their use is discontinued (e.g., because you no longer import a particular food, you no longer use a particular foreign supplier, or you have changed your FSVP procedures).

Option 1

(2) You must maintain records required under § 1.506(g)(1), (g)(2), and (h) (certain verification activities), § 1.507 (investigations and corrective actions), § 1.508 (FSVP reassessments), § 1.511 (food subject to certain dietary supplement current good manufacturing practice regulations), and § 1.513(b) (food imported from a country with an officially recognized or equivalent food safety system) for a period of at least 2 years after the records were created or obtained, except that you must maintain records of any changes to your FSVP in accordance with § 1.507(d) or § 1.508(b) until at least 2 years after their use is discontinued.

Option 2

(2) You must maintain records required under § 1.506(g)(1) and (h) (certain verification activities), § 1.507 (investigations and corrective actions), § 1.508 (FSVP reassessments), § 1.511 (food subject to certain dietary supplement current good manufacturing practice regulations), and § 1.513(b) (food imported from a country with an officially recognized or equivalent food safety system) for a period of at least 2 years after the records were created or obtained, except that you must maintain records of any changes to your FSVP in accordance with § 1.507(d) or § 1.508(b) until at least 2 years after their use is discontinued.

§ 1.511 What FSVP must I have if I am importing a food subject to certain dietary supplement current good manufacturing practice regulations?

(a) *Importers subject to certain dietary supplement current good manufacturing regulations.* If you are required to establish specifications under § 111.70(b), (d), or (f) of this chapter with respect to a food you import and you are in compliance with the requirements of part 111 of this chapter applicable to determining whether the specifications you established are met for such food, then for that food you must comply with the requirements in §§ 1.506(a), 1.509, and 1.510, but you are not required to comply with the requirements in §§ 1.502 through 1.508 (except § 1.506(a)). This requirement does not limit your obligations with respect to part 111 of this chapter or any other laws enforced by FDA.

(b) *Importers whose customer is subject to certain dietary supplement CGMP regulations.* If your customer is required to establish specifications under § 111.70(b), (d), or (f) of this chapter with respect to a food you import, your customer is in compliance with the requirements of part 111 of this chapter applicable for determining whether the specifications it established are met for such food, and you annually obtain from your customer written assurance that it is in compliance with those requirements, then for that food you must comply with the requirements in §§ 1.506(a), 1.509, and 1.510, but you are not required to comply with the requirements in §§ 1.502 through 1.508 (except § 1.506(a)).

(c) *Other importers of dietary supplements*—(1) *General.* If the food you import is a dietary supplement and neither paragraph (a) or (b) of this section is applicable, you must comply with paragraph (c) of this section and the requirements in §§ 1.503, 1.504, and 1.507 through 1.510, but you are not required to comply with the requirements in §§ 1.505 and 1.506. This requirement does not limit your obligations with respect to part 111 of this chapter or any other laws enforced by FDA.

(2) *List of foreign suppliers.* You must maintain a written list of foreign suppliers from which you are importing food.

(3) *Foreign supplier verification procedures.* You must establish and follow adequate written procedures for conducting foreign supplier verification activities with respect to the foods you import.

(4) *Purpose of supplier verification.* Your foreign supplier verification activities must provide adequate assurances that your supplier is producing the dietary supplement in accordance with the requirements of part 111 of this chapter.

(5) *Supplier verification activities.* For each dietary supplement you import under paragraph (c) of this section, you must conduct one or more of the verification activities listed in paragraphs (c)(5)(i) through (iv) of this section before using or distributing the dietary supplement and periodically thereafter. You must determine and document which verification activity or

activities are appropriate to adequately verify that the foreign supplier is in compliance with the requirements of part 111 of this chapter. You must determine and document how frequently the verification activities must be conducted.

(i) *Periodic onsite auditing.* You conduct (and document) or obtain documentation of a periodic onsite audit of your foreign supplier.

(ii) *Periodic or lot-by-lot sampling and testing of the food.* You conduct (and document) or obtain documentation (such as a certificate of analysis containing the results of the testing) from your foreign supplier of lot-by-lot or periodic sampling and testing of the dietary supplement.

(iii) *Periodic review of the foreign supplier's food safety records.* You periodically review (and document) or obtain documentation of a review of your foreign supplier's food safety records.

(iv) *Other appropriate procedure.* You use any other procedure that you have established as being appropriate. You must document your use of any such procedure.

(6) *Requirements of onsite auditing.* An onsite audit conducted under paragraph (c)(5)(i) of this section must consider the requirements of part 111 of this chapter and must include a review of the foreign supplier's written food safety plan, if any, and the supplier's implementation of such plan.

(7) *Substitution of inspection by FDA or an officially recognized or equivalent food safety authority.* Instead of an onsite audit conducted under paragraph (c)(5)(i) of this section, an importer may rely on the results of an inspection of the foreign supplier conducted by FDA or the food safety authority of a country whose food safety system FDA has officially recognized as comparable or determined to be equivalent to that of the United States, provided that the inspection was conducted within 1 year of the date that the onsite audit would have been required to be conducted. For inspections conducted by the food safety authority of a country whose food safety system FDA has officially recognized as comparable or determined to be equivalent, the food that is the subject of the onsite audit must be within the scope of the official recognition or equivalence determination, and the foreign supplier must be in, and under the regulatory oversight of, such country.

(8) *Review of results of verification activities.* You must promptly review the results of the verification activities that you conduct or obtain documentation of under paragraph (c)(5) of this section. If the results show that the foreign supplier does not meet the standard in paragraph (c)(4) of this section, you must take appropriate action in accordance with § 1.507(c).

(9) *Independence of qualified individuals conducting verification activities.* A qualified individual who conducts any of the verification activities set forth in paragraph (c)(5) of this section must not have a financial interest in the foreign supplier and payment must not be related to the results of the activity. This does not prohibit you or one of your employees from conducting the verification activity.

§ 1.512 What FSVP may I have if I am a very small importer or I am importing food from a very small supplier?

(a) *Eligibility.* This section applies only if you a very small importer or the food you are importing is from a very small foreign supplier.

(b) *Applicable requirements*—(1) *Documentation.* If this section applies and you choose to comply with the requirements in this section, you must document, at the end of each calendar year, that you meet the definition of very small importer in § 1.500 or that the foreign supplier meets the definition of very small foreign supplier in § 1.500, whichever is applicable. For the purpose of determining whether you satisfy the definition of very small importer or the foreign supplier satisfies the definition of very small foreign supplier, the baseline year for calculating the adjustment for inflation is 2012. If you or the foreign supplier conduct any food sales in currency other than U.S. dollars, you must use the relevant currency exchange rate in effect on December 31 of the year in which sales occurred to calculate the value of these sales.

(2) *Additional requirements.* If this section applies and you choose to comply with the requirements in paragraph (b) of this section, you also are required to comply with the requirements in §§ 1.502 through 1.504 and § 1.509, but you are not required to comply with the requirements in §§ 1.505 through 1.508 or § 1.510.

(3) *List of foreign suppliers.* You must maintain a written list of foreign suppliers from which you are importing food.

(4) *Foreign supplier verification activities.* For each food you import, you must obtain written assurance, before importing the food and at least every 2 years thereafter, that your foreign supplier is producing the food in compliance with processes and procedures that provide at least the same level of public health protection as those required under section 418 or 419 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350g or 350h), if either is applicable, and is producing the food in compliance with sections 402 and 403(w) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342, 343(w)). The written assurance must include a brief description of the processes and procedures that the foreign supplier is following to ensure the safety of the food.

(5) *Corrective actions.* You must promptly take appropriate corrective actions if you determine that a foreign supplier of food you import does not produce the food in compliance with processes and procedures that provide at least the same level of public health protection as those required under section 418 or 419 of the Federal Food, Drug, and Cosmetic Act, if either is applicable, or produces food that is adulterated under section 402 or misbranded under section 403(w) of the Federal Food, Drug, and Cosmetic Act. The appropriate corrective actions will depend on the circumstances but could include discontinuing use of the foreign supplier until the cause or causes of noncompliance, adulteration, or misbranding have been adequately addressed. You must document any corrective actions you take in accordance with this paragraph. This paragraph does not limit your obligations with respect to other laws enforced by FDA, such as those relating to product recalls.

(6) *Records*—(i) *Availability.* You must maintain records required under this subpart, in English, and make them available promptly to an authorized FDA representative, upon request, for inspection and copying. You must maintain records at your place of business or at a reasonably accessible location; records are considered to be at a reasonably accessible location if they can be immediately retrieved from another location by computer or other electronic means. If requested in writing by FDA, you must send records to the Agency electronically or by mail rather than making the records available for review at your place of business.

(ii) *Record quality.* All records must be legible and stored to prevent deterioration or loss.

(iii) *Record retention.* You must maintain records required under this subpart for a period of at least 2 years after the records were created or obtained.

§ 1.513 What FSVP may I have if I am importing a food from a country with an officially recognized or equivalent food safety system?

(a) *General.* If you meet the conditions and requirements of paragraph (b) of this section for a food you are importing, then you are not required to comply with the requirements in §§ 1.503 through 1.508 (except § 1.506(a)). You would still be required to comply with the requirements in §§ 1.506(a), 1.509, and 1.510.

(b) *Conditions and requirements.* (1) Before importing a food from the foreign supplier and annually thereafter, you must document that the foreign supplier is in, and under the regulatory oversight of, a country whose food safety system FDA has officially recognized as comparable or determined to be equivalent to that of the United States, and that the food is within the scope of FDA's official recognition or equivalency determination regarding the food safety authority of the country in which the foreign supplier is located.

(2) Before importing a food from the foreign supplier, you must determine and document whether the foreign supplier of the food is in good compliance standing with the food safety authority of the country in which the foreign supplier is located. You must continue to monitor whether the foreign supplier is in good compliance standing and promptly review any information obtained. If the information indicates that food safety hazards associated with the food are not being adequately controlled, you must take prompt corrective action. The appropriate corrective action will depend on the circumstances but could include discontinuing use of the foreign supplier. You must document any corrective actions that you undertake in accordance with this paragraph.

§ 1.514 What are some consequences of failing to comply with the requirements of this subpart?

(a) *Refusal of admission.* An article of food is subject to refusal of admission under section 801(a)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381(a)(3)) if it appears that the importer of that food fails to comply with this subpart with respect to that food. If an article of food has not been sold or consigned to a person in the United States at the time the food is offered for entry into the United States, the article of food may not be imported into the United States unless the foreign owner or consignee has designated a U.S. agent or representative as the importer for the purposes of the definition of ''importer'' in § 1.500.

(b) *Prohibited act.* The importation or offering for importation into the United States of an article of food by an importer without having an FSVP that meets the requirements of section 805 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 384a), including the requirements of this subpart, is prohibited under section 301(zz) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(zz)).

Dated: July 23, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

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Part IV

Department of Health and Human Services

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21 CFR Part 1 and 16

Accreditation of Third-Party Auditors/Certification Bodies to Conduct Food Safety Audits and to Issue Certifications; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 1 and 16

[Docket No. FDA–2011–N–0146]

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Accreditation of Third-Party Auditors/Certification Bodies to Conduct Food Safety Audits and to Issue Certifications

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to provide for accreditation of third-party auditors/certification bodies to conduct food safety audits of foreign food entities, including registered foreign food facilities, and to issue food and facility certifications, under the FDA Food Safety Modernization Act (FSMA). Use of accredited third-party auditors/certification bodies and food and facility certifications will help FDA prevent potentially harmful food from reaching U.S. consumers and thereby improve the safety of the U.S. food supply. FDA also expects that these regulations will increase efficiency by reducing the number of redundant food safety audits.

DATES: Submit either electronic or written comments on the proposed rule by November 26, 2013.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2011–N–0146 and/or Regulatory Information Number (RIN) 0910–AG66, by any of the following methods.

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following ways:

• *Mail/Hand delivery/Courier (for paper or CD–ROM submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and Docket No. FDA–2011–N–0146 and/or RIN 0910–AG66 for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

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

FOR FURTHER INFORMATION CONTACT: Charlotte A. Christin, Office of the Commissioner, Office of Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 4234, Silver Spring, MD 20993, 240–402–3708.

SUPPLEMENTARY INFORMATION:

Executive Summary

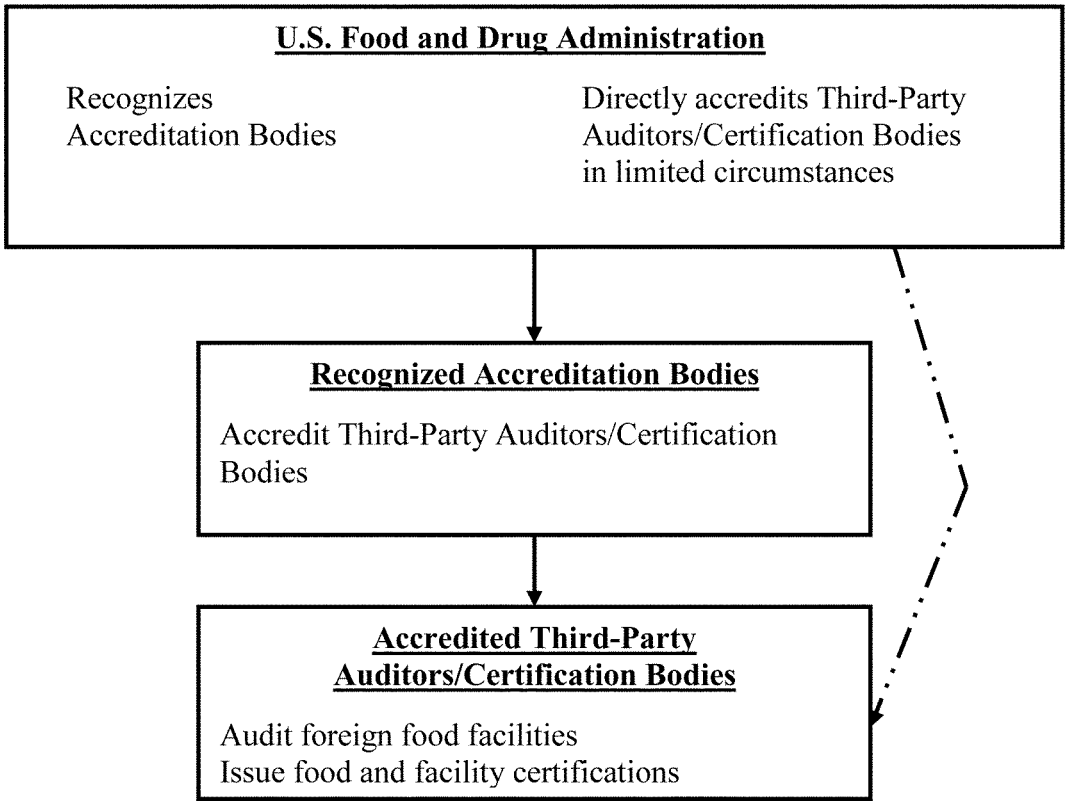
Purpose of the Proposed Rule

This proposed rule, if finalized, will help FDA ensure the competence and independence of third-party auditors/certification bodies who conduct foreign food safety audits. It also will help ensure the reliability of food and facility certifications issued by third-party auditors/certification bodies that FDA will use in making certain decisions relating to imported food (including pet food and animal feed). These certifications include, for example, food certifications required by FDA as a condition of granting admission to a food determined to pose a safety risk. Having comprehensive oversight of a credible and reliable program for third-party audits and certifications of foreign food facilities will help FDA prevent potentially harmful food from reaching U.S. consumers and thereby improve the safety of the U.S. food supply. We believe that a trusted program for foreign food safety audits and food and facility certifications—with clear requirements, standards, and procedures and operated under government oversight—will be appealing to accreditation bodies, auditors/certification bodies, and foreign food facilities. Widespread participation and broad acceptance of audits and certifications under the FDA program will help increase efficiency and reduce costs, by eliminating redundant auditing to assess foreign suppliers' compliance with the Federal Food, Drug, and Cosmetic Act (the FD&C Act).

FSMA adds section 808 to the FD&C Act (21 U.S.C. 384d), which directs us to establish a new program for accreditation of third-party auditors [1] conducting food safety audits and issuing food and facility certifications to eligible foreign entities (including registered foreign food facilities) that meet our applicable requirements. Under this provision, we will recognize accreditation bodies to accredit third-party auditors/certification bodies, except for limited circumstances in which we may directly accredit auditors/certification bodies to participate in the accredited third-party audits and certification program.

[1] Section 808 of the FD&C Act uses the term ''auditor'' to describe an entity that conducts audits and issues certifications. We propose to use the term ''auditor/certification body,'' which adds the words ''certification body'' to better comport with the terminology used by the food industry and the international standards community when describing organizations that not only conduct audits but also issue certifications based on audit results. We will use the statutory term only when referring to the requirements of section 808 of the FD&C Act.

Structure of the Accredited Third-Party Audits and Certification Program



We will use certifications issued by accredited third-party auditors/certification bodies in deciding whether to admit certain imported food into the United States that FDA has determined poses a food safety risk and in deciding whether an importer is eligible to participate in a program for expedited review and entry of food imports. We will exercise oversight of the accredited third-party audits and certification program and can remove an accreditation body or an auditor/certification body for good cause, by revoking recognition of the accreditation body or by withdrawing accreditation of the third-party auditor/certification body.

We must issue implementing regulations that include measures to protect against conflicts of interest and must issue model accreditation standards that third-party auditors/certification bodies must meet to qualify for accreditation.[2] The statute directs us to look to existing standards for guidance when developing these model accreditation standards.

Summary of the Major Provisions of the Proposed Rule

This proposal contains eligibility requirements for accreditation bodies to qualify for recognition and requirements that accreditation bodies choosing to participate in the FDA program must meet, once recognized. It also contains eligibility requirements for third-party auditors/certification bodies to qualify for accreditation and requirements that third-party auditors/certification bodies choosing to participate in the FDA program must meet, once accredited. These requirements will ensure the competence and independence of the accreditation bodies and third-party auditors/certification bodies participating in the program for accredited third-party audits and certification that is established under this subpart.

This proposal contains procedures for recognition and accreditation, as well as requirements relating to monitoring and oversight of participating accreditation bodies and auditors/certification bodies. These include procedures that we will follow when removing an auditor/certification body or an accreditation body from the program. The proposed rule contains requirements relating to auditing and certification of foreign food facilities under the program and for notifying us of conditions in an audited facility that could cause or contribute to a serious risk to the public health. The proposed requirements for monitoring, oversight, and notification are needed to give us, consumers, and other stakeholders confidence in the program and in the accredited third-party auditors/certification bodies and recognized accreditation bodies who participate.

The proposal also implements the authority granted by Congress in section 801(q) of the FD&C Act (21 U.S.C. 381(q)) to make a risk-based determination to require, as a condition of admissibility, that a food imported or offered for import into the United States be accompanied by a certification or other assurance that the food meets the applicable requirements of the FD&C Act. This clear authority to require

[2] We will issue draft model accreditation standards to specify the qualifications for accreditation, such as the minimum requirements for education and experience for third-party auditors/certification bodies (and their audit agents) to qualify for accreditation. We will open a public docket to accept comments on the draft standards and plan to take necessary procedural steps to finalize the model standards.

import certification for food, based on risk, is one of the tools we can use to help prevent potentially harmful food from reaching consumers.

In addition, this document proposes requirements for accredited third-party auditors/certification bodies to follow when issuing facility certifications that will be used by importers to establish eligibility for the Voluntary Qualified Importer Program (VQIP) under section 806 of the FD&C Act (21 U.S.C. 384b(a)). The VQIP program offers participating importers expedited review and entry of food from facilities audited and certified by third-party auditors/certification bodies accredited under this subpart.

Costs and Benefits

We summarize the annualized costs (over a 10-year time period discounted at both 3 percent and 7 percent) of the third-party proposed rule in Table 1. We are unable to estimate quantitatively the benefits of the proposed rule. Although this proposed rule would not itself establish safety requirements for imported food, it would benefit the public health by helping to ensure that imported food is produced in compliance with applicable requirements of the FD&C Act.

The Preliminary Regulatory Impact Analyses for the proposed rules on Current Good Manufacturing Practice and Hazard Analysis and Risk-Based Preventive Controls for Human Food (Preventive Controls) [3] and the Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption (Produce Safety) [4] consider and analyze the number of illnesses and deaths that those proposed regulations are aimed at reducing. The greater the compliance with the Preventive Controls and Produce Safety proposed regulations, the greater the reduction in illnesses and deaths and associated costs expected.

This proposed rule would be an important mechanism for improving and ensuring compliance with the Preventive Controls and Produce Safety proposed regulations as they would apply to imported food. For this reason, we account for its public health benefits in the economic analyses for those proposed rules and other applicable food safety regulations, instead of in the analysis for this proposed rule.

TABLE 1—SUMMARY OF ANNUALIZED COSTS OF THE PROPOSED RULE

Third party accreditation costs	3 Percent	7 Percent
Third Party Accreditation Costs for All Participants	$55,548,432	$56,756,016
Third Party Accreditation Costs for FDA	17,063,089	17,640,083
Total Costs	72,611,521	74,396,099

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I. Introduction

Each year, about 48 million Americans (1 in 6) get sick, 128,000 are hospitalized, and 3,000 die from food-borne diseases, according to recent estimates from the Centers for Disease Control and Prevention (CDC). CDC food-borne illness outbreak data also show that an increased number of outbreaks due to imported foods were reported during the most recent years of surveillance. During 2005–2010, 39 outbreaks with 2,348 illnesses were reported where the implicated food was imported into the United States, representing 1.5 percent of reported outbreaks during that time. Of the 39 import-associated outbreaks, more were reported in 2009 and 2010 (n=6 and 8 outbreaks, respectively) than were reported in each of the years between 2005 and 2008. A greater percentage of the import-related outbreaks were multistate outbreaks as compared to the overall percentage of multistate outbreaks reported (Ref. 1).[5]

President Obama signed FSMA (Pub. L.111–353) into law on January 4, 2011. FSMA enables us to better protect public health by helping to ensure the safety and security of the U.S. food supply. The Web page describing our FSMA implementation activities is at *http://www.fda.gov/fsma.*

Among other things, FSMA gave us important new tools to better ensure the safety of imported foods, which constitute approximately 15 percent of the U.S. food supply (including 80 percent of our seafood, 50 percent of our fresh fruit, and 20 percent of our vegetables). We place high priority on ensuring the accountability of importers to verify the safety of food produced overseas and to establish a new program for third-party auditing and certification of regulated foreign food firms. (By way of background, third-party audits are conducted by an entity independent of the audited firm or those who buy its products. Second-party audits are conducted by buyers for their suppliers and contractors or by one division within a firm of another division within the same firm. First-party audits are internal audits a firm conducts itself. This proposed regulation relates only to third-party audits.)

In this document, we propose requirements for third-party auditors/certification bodies choosing to become accredited to conduct food safety audits and to issue food and facility certifications to eligible foreign entities under this FDA program.

The preamble that follows provides background on the following: (1) The FSMA requirement to establish an accredited third-party auditing and

[3] The Preventive Controls proposed rule was published in the **Federal Register** on January 16, 2013 (78 FR 3646).

[4] The Produce Safety proposed rule was published in the **Federal Register** on January 16, 2013 (78 FR 3503).

[5] The CDC abstract on Foodborne Disease Outbreaks Associated with Food Imported Into the United States, 2005–2010 (Ref. 1) discussed 23 reported outbreaks with 1,994 illnesses associated with imported foods. These data were updated for a presentation at the International Conference on Emerging Infectious Diseases, to reflect the numbers discussed in this proposed rule.

certification program for food and related FSMA provisions, (2) other initiatives on third parties, (3) use of food certifications, (4) recommendations from external stakeholders on third-party certifications for food, (5) standards for assessing programs for oversight of food safety, (6) U.S. government policies on consensus standards and conformity assessment, and (7) industry programs for benchmarking standards and for auditing and certification for food facilities and their food. We seek comments on all aspects of this proposal.

II. Background

A. Legal Authority

1. Accreditation of Third-Party Auditors/Certification Bodies

Section 307 of FSMA, Accreditation of Third-Party Auditors, amends the FD&C Act (21 U.S.C. 384d) to create a new provision, section 808, under the same name. Section 808(b)(1)(A) of the FD&C Act requires us to establish a system, within 2 years of enactment, for the recognition of accreditation bodies that accredit third-party auditors to conduct food safety audits and to issue certifications for eligible foreign food entities and their products.

Section 808(b)(1)(A)(ii) of the FD&C Act further authorizes us to directly accredit third-party auditors if we have not identified and recognized an accreditation body that meets the requirements of the section within 2 years after establishing the system for recognition. If those conditions are met, we may begin to directly accredit third-party auditors.

Section 808(c)(5)(C) of the FD&C Act directs us to issue implementing regulations for section 808 not later than 18 months after enactment (i.e., by July 4, 2012). The regulations must require audits to be unannounced and must contain protections against conflicts of interest between accredited auditors (and their audit agents) and the entities they audit or certify, including requirements on timing and public disclosure of fees and appropriate limits on financial affiliations. (21 U.S.C. 384d(c)(5)(C)(ii) and (c)(5)(C)(iii)). In addition, the regulations must require audits to be unannounced (21 U.S.C. 384d(c)(5)(C)(i)).

Section 808(b)(2) of the FD&C Act contains an additional requirement to develop model accreditation standards to qualify third-party auditors for accreditation under this FDA program. The statute describes the model accreditation standards in terms of requirements an auditor must meet to qualify for accreditation. We are including in this proposed rule a framework for the model accreditation standards. We currently are developing the Model Accreditation Standards document, which elaborates on the framework and details the qualifications required for accreditation. We are considering existing international standards and particularly the work of the International Organization for Standardization Committee on conformity assessment (ISO/CASCO). For example, we are considering minimum requirements for education and experience of auditors/certification bodies. We plan to issue draft model standards for public comment, before finalizing them.

2. Voluntary Qualified Importer Program

Facility certifications (as described in sections 806(a) and 808(c)(2) of the FD&C Act) will be used by FDA to help determine whether a facility is eligible to be a facility from which food may be offered for import under VQIP. The criteria and procedures for VQIP participation are outside the scope of this rulemaking. FDA plans to issue guidance on VQIP and will solicit public comment on VQIP at that time.

3. Authority To Require Import Certifications for Food

Food certifications (as described in sections 801(q) and 808(c)(2) of the FD&C Act) will be required to meet a condition for admitting a food into the United States under section 801(a) of the FD&C Act, where necessary based on our determination of the risk of the food. Specifically, section 801(q) of the FD&C Act gives us express authority to require such certification based on a determination that includes the following factors:

- The known safety risks associated with the food;
- The known food safety risks associated with the country, territory, or region of origin (area of origin) of the food;
- A finding we make, supported by scientific, risk-based evidence, that:
  - The food safety programs, systems, and standards in the area of origin of the food are inadequate to ensure that the article of food is as safe as a similar article of food that is manufactured, processed, packed, or held in the United States, in accordance with the requirements of the FD&C Act; and
  - The certification would assist us in determining whether to refuse or admit the article of food into the United States; and
- Information submitted to us, under section 801(q)(7) of the FD&C Act, regarding improvements to a food safety program, system, or standard we previously found inadequate and demonstrating that those controls are adequate to ensure that an article of food is as safe as a similar article of food that is manufactured, processed, packed, or held in the United States under the requirements of the FD&C Act.

In addition to giving FDA authority to require food certifications, section 801(q) of the FD&C Act grants FDA authority to require, alternatively, ''such other assurance'' as FDA determines appropriate, that the food complies with applicable requirements of the FD&C Act. When making a determination on whether mandatory certification is appropriate, we will consider the statutory factors in light of the specific circumstances involved and will evaluate various types of relevant information/evidence. We intend to exercise our authority under section 801(q) of the FD&C Act judiciously and in conjunction with our array of other available enforcement tools.

Section 801(q)(3) of the FD&C Act states the food certifications or other assurances used for purposes of section 801(a) of the FD&C Act may be issued by third-party auditors accredited under section 808 of the FD&C Act or by the government of the country from which such food originated, if we so designate (21 U.S.C. 381(q)(3)). The certifications or other assurances may take the form of shipment-specific certificates, a listing of certified facilities that manufacture, process, pack, or hold such food, or in such other form as we may specify.

Section 801(q) of the FD&C Act became effective upon enactment of FSMA in 2011 and is expressly linked to the accreditation of third-party auditors/certification bodies that is the subject of this proposed rule.

4. Compliance With International Agreements

FSMA section 404 (21 U.S.C. 2252) states that nothing in the statute should be construed in a manner ''inconsistent with'' the agreement establishing the World Trade Organization (WTO) or any other treaty or international agreement to which the United States is a party.

FSMA was notified to the WTO on February 14, 2011 (G/SPS/N/USA/2156) (Ref. 2), to provide information on the FD&C Act to WTO members. The notification included an electronic mailbox link to receive comments from members. Several comments have been received via the mailbox. The comments

note a high degree of interest in FSMA implementation, particularly with respect to how implementation will impact developing countries.

Third-party certification for food is recognized as increasingly important for developing nations to gain market access for their products. Several international development agencies are focusing efforts in this area. The United Nations Industrial Development Organization, for example, is supporting the development of conformity assessment bodies and accreditation bodies in several developing nations (Ref. 3). The U.S. Agency for International Development has offered its assistance and support for developing nation governments to take a more proactive role in accreditation services, standards development, and institutional infrastructure to assist and protect their nationals operating in international food markets (Ref. 4).

5. Other Provisions of the Federal Food, Drug, and Cosmetic Act

The authority for this proposed rule also derives from section 701(a) of the FD&C Act (21 U.S.C. 371(a)), which authorizes us to issue regulations for the efficient enforcement of the FD&C Act. Regulations for ensuring the competency and independence of recognized accreditation bodies and of accredited third-party auditors/certification bodies will help assure us of the validity and reliability of certifications and other information resulting from the food safety audits they conduct. We will accept certifications issued by accredited third-party auditors/certification bodies for the two purposes identified in section 808 of the FD&C Act: To establish eligibility for VQIP participation; and to meet a condition of admissibility for imported food subject to a mandatory certification requirement. We also can use information from such audits for other related purposes in enforcing the FD&C Act. For example, we propose to allow importers to use reports of regulatory audits conducted by accredited third-party auditors/certification bodies in meeting any requirements for onsite audits of foreign suppliers, under the proposed rule entitled, ''Foreign Supplier Verification Programs for Importers of Food for Humans and Animals'' (FSVP), published elsewhere in this issue of the **Federal Register**.

B. FDA Initiatives on Third Parties

1. Notice Requesting Comments on Third-Party Certification for Food and Feed

In the **Federal Register** of April 2, 2008 (73 FR 17989), we issued a notice (2008 notice) requesting comments on the benefits, obstacles, and availability of third-party certification programs for food and animal feed. At the time, an increasing number of retailers and food services providers had begun to ask their foreign and domestic suppliers to become certified to their buyers' requirements for safety and quality. Suppliers (such as producers, comanufacturers, and repackers) also were increasingly looking to third-party certification programs as a means to verify compliance with U.S. regulatory requirements, even without requirements from buyers.

In the 2008 notice, we asked questions about existing certification programs and criteria, as well as obstacles and incentives for participating in these voluntary programs. We received approximately 70 comments in response. The comments generally supported the use of third-party certification programs and suggested that our acknowledgment of such programs would provide additional incentives for participation. Further discussion of the comments on the 2008 notice is available in the ''Background'' section of the subsequently issued draft ''Guidance for Industry on Voluntary Third-Party Certification Programs for Foods and Feeds'' and is described in section II.B.2.

2. FDA Guidance on Third-Party Certification for Food and Feed

In the **Federal Register** of July 10, 2008 (73 FR 39704), we announced the availability of the draft ''Guidance for Industry on Voluntary Third-Party Certification Programs for Foods and Feeds.'' The draft guidance describes the general attributes of a voluntary third-party certification program needed to help ensure that certification is a reliable verification that food from certified establishment meets applicable requirements.

We finalized the guidance in January 2009, announcing its availability in the **Federal Register** of January 16, 2009 (74 FR 3058) (2009 Guidance) (Ref. 5). The 2009 Guidance describes the general attributes we believe a third-party certification program should have to give us confidence in the reliability of its certifications. It also explains our vision, prior to FSMA enactment, of how we might use such voluntary third-party certifications to assist in determining inspection, field exam, and sampling priorities, as well as in making admissibility decisions for imported food. We intend to withdraw the 2009 Guidance upon publication of a final rule for accredited third-party certification.

3. Pilot Project on Third-Party Certification for Aquacultured Shrimp

In the **Federal Register** of July 10, 2008 (73 FR 39705), we published a notice inviting third-party certification bodies to participate in a pilot of voluntary third-party certification of aquacultured shrimp (shrimp pilot). The goal of the shrimp pilot was to gain knowledge and experience with third-party certification to assist us in evaluating the utility and feasibility of using third-party certification programs as part of our oversight of foreign food firms.

The pilot data indicate that having the appropriate FDA infrastructure, including logistical and resource support, will be critical to the success of any full-scale accredited third-party certification program (Ref. 6). The role we played in the shrimp pilot was analogous to the role traditionally played by an accreditation body, monitoring the performance of certification bodies. The pilot demonstrated to us that direct accreditation, in which we ourselves accredit and provide direct oversight of a potentially unlimited number of third-party certification bodies, would be costly and administratively burdensome, though direct accreditation may be appropriate in limited circumstances, as will be discussed in section IV.A.8.

4. FDA Third-Party Program for Mammography

In developing this proposed rule, we reviewed other Agency third-party programs, including the FDA program, required by the Mammography Quality Standards Act of 1992 (Pub. L. 102–539) (as amended), to approve accreditation bodies to evaluate and accredit mammography facilities based upon quality standards. Only facilities that are accredited by, or undergoing accreditation by, an accreditation body we approved, may receive our certificates (or the certificates of a State certifying agency we approved) to legally perform mammography (Ref. 7).

C. FDA's Use of Certifications for Food

For years, we have used certification as a tool for verifying that imported foods comply with our food safety requirements and reducing the need for

us to sample at entry. Since the late 1980s, for example, the Export Inspection Council of the Indian Ministry of Commerce has sampled, analyzed, and issued certificates of conformance for lots of black pepper exported directly to the United States. Indian black pepper shipments accompanied by such certifications are not subject to detention without physical examination under FDA Import Alert 28–02 (Ref. 8). Under Memoranda of Understanding (MOUs) with several foreign governments, we rely upon certifications that caseins and caseinates, and mixtures thereof, to be exported to the United States are in compliance with our requirements, which are intended to minimize the need for us to extensively sample certified products (Ref. 9). These are but a few examples of the ways we rely on certifications as a means to help assure that an article of food complies with our requirements and to minimize the need for extensive sampling at entry.

D. External Recommendations on Third-Party Certification for Food

In September 2012, the Government Accountability Office (GAO) issued a report discussing possible challenges associated with establishing and administering the accredited third-party certification program, including: offering incentives to encourage participation; meeting challenges associated with creating a new program; addressing stakeholder concerns; and conducting oversight of the program, once established (Ref. 10). We believe this proposed rule addresses the relevant challenges identified by GAO.

In June 2010, a committee of experts convened by the Institute of Medicine and the National Research Council (IOM/NRC committee) released a report examining gaps in public health protection afforded by the farm-to-table food safety system under our purview and identifying opportunities to fill those gaps (Ref. 11). The IOM/NRC committee concluded that we need to address barriers to improving the efficiency of inspections by, among other things, exploring third-party auditing of food facilities as an alternative model for measuring compliance. The IOM/NRC committee's report specifically recommended that we consider the implications of accepting inspection data from third-party auditors inspecting facilities for compliance with food safety regulatory requirements. The IOM/NRC report also stated that, if we use this approach, we should set minimum standards for such auditors and audits, with oversight and implementation being assigned to an accreditation and standards body.

E. FDA Standards for Assessing Capabilities of Food Safety Systems

In developing the framework for recognition of accreditation bodies and accreditation of third-party auditors required by section 808 of the FD&C Act, we looked at our existing standards for assessing the capabilities of food safety systems at the State level, through the Manufactured Foods Regulatory Program Standards (MFRPS) (Ref. 12). The MFRPS establish a uniform foundation for the design and management of high-quality State regulatory programs for food manufacturers, focusing on ten key areas: (1) Regulatory foundation; (2) inspector training program; (3) risk-based inspection program; (4) audits of the inspection program; (5) protocols for food-related illnesses, outbreaks, and response; (6) compliance and enforcement program; (7) industry and other stakeholder relations; (8) program resources; (9) program assessment; and (10) laboratory support.

We also considered a FDA-New Zealand pilot project for assessing food safety systems, authority, oversight and monitoring that was discussed at a public hearing in March 2011 (Ref. 13). We found particularly useful the draft FDA International Comparability Assessment Tool (ICAT) used in reviewing New Zealand's food safety regulatory system to determine if it provides a similar set of protections to that of FDA (Ref. 14). Following the successful completion of the New Zealand comparability pilot, in late 2012 FDA launched a bilateral pilot project with the Canadian Food Inspection Agency (CFIA) on systems recognition (previously known as comparability), sharing FDA's draft ICAT as a guide for the systems recognition process. FDA and CFIA currently are finalizing their respective systems recognition reviews.

F. U.S. Government Policies on Consensus Standards and Conformity Assessment

Implementation of section 808 of the FD&C Act occurs against the backdrop of the broader Federal policies on consensus standards and conformity assessment under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Public Law 104–113).

The NTTAA, together with the Office of Management and Budget (OMB) Circular A–119, revised February 10, 1998 (Ref. 15), directs Federal Agencies to use voluntary consensus standards in lieu of government-unique standards except where inconsistent with law or otherwise impractical. OMB Circular A–119 states that the use of voluntary standards, whenever practicable and appropriate, is intended to eliminate the cost to government of developing its own standards and decrease the cost of goods procured and the burden of complying with Agency regulation; provide incentives and opportunities to establish standards that serve national needs; encourage long-term growth for U.S. enterprises and promote efficiency and economic competition through harmonization of standards; and further the policy of reliance upon the private sector to supply government needs for goods and services.

In addition, the U.S. Government has issued a National Standards Policy and Federal guidance on conformity assessment activities (which are defined as activities concerned with determining directly or indirectly that requirements for products, services, systems, and organizations are fulfilled) (15 CFR 287.2).

As directed by OMB in Circular A–119 (Ref. 15), the National Institute of Standards and Technology (NIST), in the **Federal Register** of August 10, 2000 (65 FR 48894), issued policy guidance on Federal conformity assessment activities (Federal conformity assessment guidance) (codified at 15 CFR part 287). The guidance applies to all Federal Agencies that set policy for, manage, operate, or use conformity assessment activities or results, domestically and internationally (except for activities conducted pursuant to treaties) and is intended to eliminate unnecessary duplication and complexity in conformity assessment requirements. (We note that OMB has announced it is currently revising Circular A–119, and NIST is revising the Federal conformity assessment guidance (Ref. 16)).

The current Federal conformity assessment guidance provides for Federal Agencies to use, where appropriate, relevant guides or standards for conformity assessment [6] practices from domestic and international standardizing bodies such as the Codex Alimentarius Commission (Codex),[7] the International Organization

[6] ISO/IEC 17000:2004, Conformity assessment—Vocabulary and general principles (Ref. 17) defines ''conformity assessment'' as ''demonstration that specified requirements relating to a product, process, systems, person or body are fulfilled.

[7] The Codex Alimentarius Commission, established by Food and Agriculture Organization of the United Nations (FAO) and the World Health Organization (WHO) in 1963 develops harmonized

Continued

for Standardization (ISO)/International Electrotechnical Commission (IEC),[8] and the American National Standards Institute (ANSI). The guidance also notes that each Agency retains the responsibility, and authority, to select the conformity assessment activities and procedures (e.g., guides and standards) that will best meet its legislative mandates and programmatic objectives (15 CFR part 287).

In developing this proposed rule, we considered several voluntary consensus standards, specifically ISO/IEC 17000: 2004, Conformity assessment—Vocabulary and general principles (Ref. 17) and ISO/IEC 17011: 2004, Conformity assessment—General requirements for accreditation bodies accrediting conformity assessment bodies (Ref. 18), which contains the following major elements: (1) Legal responsibility, structure, and impartiality; (2) management systems, including records, internal audits, nonconformities, and corrective actions; (3) personnel associated with the accreditation body, personnel associated with the accreditation process, and monitoring performance assessments of accreditation personnel; (4) the accreditation process; and (5) and roles and responsibilities of the accreditation body and the certification body. We will address elements of ISO/IEC 17011: 2004 that are relevant to this rule in our discussion of the proposed requirements for accreditation bodies in section IV.A.2 through IV.A.4.

In addition, we considered other ISO/IEC 17021: 2011, Conformity assessment—Requirements for bodies providing audit and certification of management systems (Ref. 19), which contains similar requirements for bodies auditing management systems: (1) Legal matters and contractual matters; (2) impartiality; (3) structural requirements; (4) resource requirements, including competence of management and personnel; (5) monitoring and surveillance; (6) internal audits; and (7) records.

We also considered ISO/IEC Guide 65: 1996, General requirements for bodies operating product certification systems (Ref. 20).[9] ISO also has issued the 22000 series of standards for food safety management systems, including ISO/TS 22003: 2007, Food safety management systems—Requirements for bodies providing audit and certification of food safety management systems (Ref. 21).[10]

These standards are among the relevant information we used in developing this proposed rule. We do not propose to incorporate these standards by reference into our regulations, because they contain additional requirements that are not relevant to our program and might unnecessarily create disincentives to participation. A copy of each of these ISO standards has been placed in the docket for this rulemaking and is made available at the Division of Dockets Management at address listed in the **ADDRESSES** section of this document. The standards also are available electronically by purchase from ISO, at *http://www.iso.org.*

As described more fully in section III, we developed this proposed rule having received information and input from a broad range of stakeholders that included public and private members of the standards community. We met with representatives of other U.S. Government agencies and foreign governments and participated in listening sessions requested by stakeholders wishing to share their views on section 808 of the FD&C Act.

We believe the proposal aligns with the NTTAA, the National Standards Policy, and current versions of OMB Circular A–119 (Ref. 15) and the Federal conformity assessment guidance (15 CFR part 287), in relying upon the principles of voluntary consensus standards currently used globally and domestically by the food industry, the international standards community, and conformity assessment bodies.

Under the guidance at 15 CFR 287.4(b), we seek comment on the rationale for the conformity assessment decisions we have made in developing this proposal. In particular, we seek comment on whether the voluntary consensus standards we cite are the appropriate standards upon which to base this rulemaking. If alternative standards are suggested, we request that copies of any such standards be submitted along with the comment(s).

G. Industry Practices on Benchmarking Standards and Third-Party Audits and Certification for Food and Food Facilities

As a result of consolidation within the food industry and the globalization of the marketplace, coupled with some high-profile food safety incidents, many food retailers and food service providers began to require their suppliers to be audited against their standards (more commonly known as ''buyer requirements'') (Ref. 11). Some of these supplier audits were conducted by auditors/certification bodies employed by, or acting as agents of, buyers. Other auditors were third parties, independent of both buyers and suppliers.

As buyers increasingly relied on audits to assess compliance with their safety requirements, more and more suppliers began to face multiple food safety audits. The proliferation of buyers' requirements created inefficiencies that ultimately spurred several efforts to harmonize audits. These include the Global Food Safety Initiative (GFSI), which was established in 2000 by a group of international retailers (Ref. 22). GFSI benchmarks food safety schemes[11] against a harmonized set of key elements for food safety and management systems. GFSI's benchmarking guidance (Ref. 23), and indeed many of the food safety schemes it benchmarks, use Codex as their foundational standards.

GFSI's benchmarking assesses a scheme's food safety standards and the governance and management structure of the food safety scheme owner, such as technical competence, safeguards against conflicts of interest, and procedures for accreditation bodies to oversee the certification bodies that audit and issue certifications under the food safety scheme (Ref. 23). For example, the U.S.-based American National Standards Institute (ANSI) currently provides accreditation services for three GFSI-benchmarked food safety schemes: The Food Marketing Institute's Safe Quality Food Initiative scheme, the British Retail Consortium scheme, and the Global GAP scheme (Ref. 24). As is discussed in the Preliminary Regulatory Impact Analysis (Ref. 25) for this proposed rule, dozens of accreditation bodies worldwide accredit certification bodies to conduct food safety audits. Both large and small suppliers are increasingly relying on third-party audits and certification as a means to ensure

international food standards, guidelines and codes of practice to protect the health of the consumers and ensure fair trade practices in the food trade. The Commission also promotes coordination of all food standards work undertaken by international governmental and non-governmental organizations. See, *http://www.codexalimentarius.org/codex-home/en/.*

[8] ISO is a voluntary, consensus, standards developer with standards covering many aspects of technology and business, including food safety. See, *http://www.iso.org/iso/home/about.htm.*

[9] Subsequently, ISO/IEC Guide 65:1994 (Ref. 20) was updated and incorporated into ISO/IEC 17065.

[10] This series includes standards the food industry uses in establishing and maintaining its food safety management systems and also the standards that auditors/certification bodies use in assessing those systems.

[11] A food safety scheme generally includes the food safety standard against which a food facility is assessed and the management system associated with the standard.

market access for their food products. In addition, domestic and foreign suppliers (such as producers, comanufacturers, or repackers) are increasingly looking to third-party certification programs to assist them in verifying that their facilities and food meet applicable food safety standards, whether private food safety schemes such as those benchmarked by GFSI or public standards such as the FD&C Act requirements, which are the relevant standards for purposes of the FDA accredited third-party audit and certification program. The Federal Government recognizes that rigorous voluntary certification programs can provide assurance that products meet U.S. requirements. Currently, private food and facility certifications are frequently used but can result in duplicate audits and certifications. Under this proposal, FDA will oversee a certification program that will, we believe, create efficiencies by reducing the number of redundant food safety audits and by allowing us to better target resources for verifying compliance with applicable requirements.

III. FSMA Imports Public Meeting and Stakeholder Input

Since enactment of FSMA, we have reached out to stakeholders in the food industry, the international community, standards organizations, accreditation and certification bodies, consumer groups, government agencies, and other interested parties to gain input and perspective on how best to implement FSMA. Among those activities, on March 29, 2011, we held a public meeting with stakeholders to discuss the implementation of the FSMA import safety provisions, including section 808 of the FD&C Act on accredited third-party certification. For additional information about this public meeting, including the agenda, transcripts, and an archived webcast, see *http://www.fda.gov/Food/FoodSafety/FSMA/ucm249257.htm.*

In conjunction with the public meeting, we opened a public docket, with notice in the **Federal Register** of March 14, 2011 (76 FR 13643), soliciting comments on implementation of section 808 of the FD&C Act and other import provisions added or amended by FSMA. We received several comments on accredited third-party certification, from a variety of stakeholders including a foreign authority (1); trade associations (11); auditors/certification bodies and a laboratory (4); consumer groups (3); other non-profits (1); and an individual (1). Some common themes emerged, including comments on using existing systems as a model; considering impacts on small and medium-sized businesses; requiring notification of conditions that could cause or contribute to a serious risk to public health; ensuring auditor competency; and preventing conflicts of interest. This docket (FDA–2011–N–0146) is available electronically at *http://www.regulations.gov,* or at the Division of Dockets Management (see **ADDRESSES**).

In addition to attending the public meeting, several stakeholders requested meetings to discuss their current programs and to share their views and recommendations for implementing section 808 of the FD&C Act. These stakeholders represented a broad range of interests, including consumer groups, trade associations, auditors/certification bodies and laboratories. We also met with representatives of foreign governments, as part of ongoing outreach and collaboration with foreign regulatory partners. Topics for these meetings included the statutory requirements for accreditation of third-party auditors, including FDA's authority to directly accredit third-party auditors/certification bodies; [12] voluntary consensus standards and industry practices on accreditation, auditing, and certification; and international considerations. Additionally, we note that FDA representatives have been invited to attend meetings, hosted by stakeholders, which included discussions of third-party audits and certifications.

The input and perspectives gained through each of these interactions helped shape this proposed rule. We have identified some common themes from these interactions. Most stakeholders expressed significant concerns regarding existing capacity of third-party food safety auditors/certification bodies and, for some stakeholders, the degree of competency demonstrated by the available cadre of auditors/certification bodies. We recognize that the credibility of the new third-party program rests largely on the quality of the auditing and certification work performed by accredited third-party auditors/certification bodies and have attempted to address those concerns in this rulemaking.

In other areas, stakeholders' interests diverged. For example, consumer groups expressed a strong interest in transparency of the program, including public disclosure of audit reports. Current industry practice is to maintain the confidentiality of audit reports except to the extent that the audited firm waives confidentiality or where otherwise required by law. Industry also has expressed concern about the statutory requirement for accredited auditors to notify us of conditions in an audited firm that could cause or contribute to a serious risk to the public health. Some in industry have taken the position that stringent disclosure and transparency requirements may dissuade food firms from using third-party auditors/certification bodies accredited under our program.

As an initial matter, we note that we are bound to implement FSMA as enacted and to comply with all other applicable disclosure laws (e.g., the Freedom of Information Act (FOIA)) (5 U.S.C. 552). Within that legal framework, we have balanced the following competing public interests: (1) Providing as much information to the public as possible about audits of foreign food entities and the performance of accredited auditors/certification bodies, so that individuals may assess the performance and credibility of the accredited third-party audits and certification program; (2) protecting the proprietary interests of food entities related to their trade secrets and confidential commercial information to the extent allowable by statute, as well concerns about public release of sensitive information that would not otherwise be publicly available; and (3) protecting the public health by being able to attract sufficient numbers of foreign food entities, third-party auditors/certification bodies, and accreditation bodies to make the program cost-effective and otherwise successful.

To gain credibility with consumers and address industry views on sensitive information, this proposed rule seeks to balance disclosure and confidentiality concerns. It reflects our views on how best to strike the balance between these and other competing interests. We believe this proposal reflects the intent of section 808 of the FD&C Act and the purpose of the law, offering a practical, flexible, and effective approach to the accredited third-party audits and certification program. We seek comment on the framework this proposed rule would create for recognition of accreditation bodies and accreditation of third-party auditors/certification bodies, how it aligns with existing voluntary industry programs, and what expectations consumers have for the ability of this program to help us ensure the safety of imported food.

[12] The docket for this rulemaking contains, as background material, a letter from Caroline Smith DeWaal of the Center for Science in the Public Interest, which was received after the docket for the public meeting closed and before issuance of this proposed rule. The letter offers an analysis of FDA's authority for direct accreditation.

In addition, we invite comments on possible effects of the creation of an FDA program for accredited third-party audits and certification. We are particularly interested in receiving comments and data on the availability of competent auditors/certification bodies to participate in our program or about the likelihood of entities being able to scale-up their capacity to participate in our program and to serve demand outside the scope of our program. We understand from public comments and stakeholder meetings that industry and the conformity assessment community have concerns about access to sufficient numbers of qualified third-party auditors/ certification bodies under current conditions. We also understand that some industry leaders have developed various strategies and plans for increasing auditor capacity. We request comments and information on the progress of these efforts and the impact the establishment of our program will have on accelerating these efforts. Given that this program is for food and facility certifications only for purposes of mandatory certification and VQIP eligibility under sections 801(q) and 806 of the FD&C Act (respectively), what effect, if any, do stakeholders anticipate this program will have on current capacity issues?

We also request stakeholder input on any possible trade impacts of the program, once established. What effect might this program have on the existing issues with auditor capacity? Will it affect foreign or domestic food firms' ability to provide certifications to their customers? If so, are foreign and domestic firms likely to be affected in the same manner and to the same degree? If not, what are the likely impacts to each? Are there particular types of food firms or food products, or certain areas of the world in which capacity issues are more likely to be prevalent and to what degree? Are there other factors impacting the availability of competent auditors? Are there any solutions or approaches that might be practical and appropriate for FDA, as a regulatory Agency, to use in addressing auditor capacity issues within the accredited third-party audits and certification program?

We encourage stakeholders to consider and comment on this proposed rule and the various interests at stake in this rulemaking, with recommendations about the proper balance of competing interests.

IV. Purpose and Description of the Proposed Rule

In section 808 of the FD&C Act, Congress directed us to establish an accredited third-party audits and certification program that leverages the work of existing private sector audit programs and efforts, while requiring measures to better ensure audit rigor and objectivity. We believe this proposed rule, coupled with our oversight of the program, will help ensure the competence and independence of third-party auditors/ certification bodies who conduct foreign food safety audits. It also will help ensure the reliability of certifications issued by third-party auditors/ certification bodies that we may use in making certain decisions relating to imported food.

Having comprehensive oversight of a credible and reliable program for third-party audits and certifications of foreign food facilities will help us prevent potentially harmful food from reaching U.S. consumers and thereby improve the safety of the U.S. food supply. As explained previously, we believe this new program will draw a significant number of participants and will be broadly accepted by industry. Currently, buyers seeking to import regulated product from a foreign food facility often require food safety audits that are conducted under varying audit criteria. By establishing a trusted program for third-party audits and certification of foreign food facilities that operates under public oversight, we expect that the number of redundant food safety audits performed to assess compliance with the FD&C Act will be reduced, which, in turn, will increase efficiency and reduce costs to industry. Our estimates relating to reductions in redundant audits are addressed more fully in the Preliminary Regulatory Impact Analysis (Ref. 25).

More broadly, we think that by capitalizing on private sector food safety efforts and linking them to the public assurance system, accredited third-party certification can help transform the way we ensure the safety of globally traded food that is consumed in the United States. In our vision of the future, we do not see third-party audits replacing public oversight, but rather helping us ensure that we make the best, most efficient use of both public and private resources to produce a safe food supply.

We are proposing requirements that would apply to several different types of entities—i.e., accreditation bodies, third-party auditors/certification bodies, and eligible entities—and an option for importers as well. We are organizing this proposed rule by those categories, with specific requirements for accreditation bodies (proposed §§ 1.610 through 1.636), third-party auditors/ certification bodies (proposed §§ 1.640 through 1.672), eligible entities (proposed §§ 1.680 and 1.681), and importers (proposed § 1.698). Provisions of general applicability appear in proposed §§ 1.600 and 1.601 (definitions and scope), § 1.690 (publicly available information), §§ 1.691 through 1.693 (challenges to FDA decisions).

Accordingly, we are proposing to amend our regulations in parts 1 and 16 (21 CFR parts 1 and 16) to implement FSMA section 307, which adds section 808 to the FD&C Act and is codified at 21 U.S.C. 384d. We are proposing to add new subpart M to part 1 and to amend existing part 16 (21 CFR part 16) as follows:

A. Proposed Revisions to Part 1, New Subpart

1. Definitions and Scope

a. *What definitions apply to this subpart? (Proposed § 1.600).* Proposed § 1.600 contains definitions of several terms used in this rule. Where possible, we propose to rely on existing statutory and regulatory definitions. Where necessary to provide clarity to this rule, we have developed some additional definitions that align with existing law and regulations, as well as current practices of the international community, accreditation and certification bodies, and the food industry.

Proposed § 1.600(a) and (b) state that definitions contained in section 201 of the FD&C Act (21 U.S.C. 321) will apply to this rule, except as those terms are otherwise defined in paragraph (c). Because ''food'' is defined in section 201(f) of the FD&C Act, but not in proposed § 1.600(c), the definition of ''food'' that we propose to apply to this rule is the definition of ''food'' appearing in section 201(f). Examples of ''food'' under this proposed definition would include, but not be limited to, fruits, vegetables, fish, dairy products, eggs, raw agricultural commodities for use as food or components of food, animal feed (including pet food), food and feed ingredients and additives (including substances that migrate into food from packaging and other articles that contact food), dietary supplements and dietary ingredients, infant formula, beverages (including bottled water), live food animals, bakery goods, snack foods, candy, and canned food. (See, e.g., 21 CFR 1.377. See also the discussion of proposed § 1.601(d)

regarding a limited exemption for alcoholic beverages and prepackaged foods from certain facilities.)

''Accreditation'' means a determination by a recognized accreditation body, or by FDA in the case of direct accreditation, that a third-party auditor/certification body is competent to perform the activities required of an accredited auditor/certification body for the purposes of this rule. In developing this definition, we considered international standards on accreditation, including ISO/IEC 17011:2004 (Ref. 18), which defines accreditation as an attestation ''conveying formal demonstration'' of a conformity assessment body's competence to carry out specific conformity assessment tasks.

''Accreditation body'' means an authority that performs accreditation of third-party auditors/certification bodies. This definition is already in use in section 808(a) of the FD&C Act and is consistent with international standards, such as ISO/IEC 17011:2004 (Ref. 18), which defines ''accreditation body'' as an ''authoritative body'' that conducts accreditation.

''Accredited auditor/certification body'' means a third-party auditor/certification body that a recognized accreditation body (or, in the case of direct accreditation, FDA) has determined meets the applicable requirements of this subpart and is authorized to conduct food safety audits and to issue food or facility certifications to eligible entities. This definition reflects the statutory definitions of ''accredited third party auditor'' and ''third party auditor'' and a common understanding of the activities to be performed under this program.

''Audit'' means:

1. With respect to an accreditation body, the systematic, independent, and documented examination (through observation, investigation, and records review) by FDA to assess the accreditation body's authority, qualifications (including its expertise and training programs), and resources; its procedures for quality assurance, conflicts of interest, and records; its performance in accreditation activities; and its capability to meet the applicable requirements of this subpart.

2. With respect to a third-party auditor/certification body, the systematic, independent, and documented examination (through observation, investigation, and records review) by a recognized accreditation body (or, in the case of direct accreditation, FDA) to assess the third-party auditor's/certification body's authority, qualifications (including its expertise and training programs), and resources; its procedures for quality assurance, conflicts of interest, and records; its performance in auditing and certification activities; and its capability to meet the applicable requirements of this subpart; and

3. With respect to an eligible entity, the systematic, independent, and documented examination (through observation, investigation, records review, and as appropriate, sampling and laboratory analysis) by an accredited auditor/certification body to assess the entity, its facility, system(s), and food for the purpose of determining whether the food or facility of the eligible entity is in compliance with the FD&C Act (which includes, where applicable, an assessment of the entity's preventative controls, sanitation, monitoring, verification, corrective actions, and recalls) and, for consultative audits, also includes an assessment of compliance with applicable industry standards and practices.

The term describes the nature and scope of activities involved in the various types of audits and assessments that will be conducted under this program. We incorporated relevant language from the definitions of consultative audit and regulatory audit in section 808(a)(5) and (a)(7) of the FD&C Act and language specific to the requirements used in audits and assessments of accreditation bodies, third-party auditors/certification bodies, and eligible entities.

We considered our 2009 guidance (Ref. 5) and the descriptions of audit activities under our MFRPS (Ref. 12). We also examined usage in international standards, such as the Codex Principles for Food Import and Export Certification (CAC/GL 20–1995) (Ref. 26), which define ''audit'' as a ''systematic and functionally independent examination to determine whether activities and related results comply with planned objectives.'' Additionally, we looked at ISO/IEC 17000:2004 (Ref. 17), which defines ''audit'' as a ''systematic, independent, documented process for obtaining records, statements of fact or other relevant information and assessing them objectively to determine the extent to which specified requirements are fulfilled.''

''Audit agent'' means an individual who is an employee or other agent of an accredited auditor/certification body who, although not individually accredited, is qualified to conduct food safety audits on behalf of an accredited auditor/certification body. An audit agent includes a contractor of the accredited auditor/certification body.

The term is based on section 808(a)(1) of the FD&C Act, which defines ''audit agent'' as an employee or agent of an accredited auditor[/certification body] who is qualified to conduct food safety audits on its behalf. In the definition, we clarify that contractors who are authorized to act for, and under the direction of, the accredited auditor/certification body are allowed to serve as an audit agents.

''Certification body'' means a foreign government, agency of a foreign government, foreign cooperative, or any other third party that is eligible to be considered for accreditation to conduct food safety audits and to certify that eligible entities meet the requirements of the FD&C Act. A certification body may be a single individual or an organization. A certification body may use audit agents to conduct food safety audits. Certification Body has the same meaning as Third-Party Auditor as that term is defined in section 808 of the FD&C Act and in this subpart.

This definition emphasizes the role of ''third-party auditors,'' under section 808 of the FD&C Act, in issuing facility certifications that importers must use to establish eligibility for VQIP participation and food certifications that may be required to satisfy a condition of admissibility for an imported food we determine poses a safety risk under section 801(q) of the FD&C Act.

In developing the definition of ''certification body,'' we looked at the definition of ''third-party auditor'' in section 808(a)(3) of the FD&C Act, as well as terminology used by the international community and the food industry. For example, ISO/IEC 17000:2004 (Ref. 17) explains that a ''certification system'' is a conformity assessment system that includes ''selection, determination, review and finally certification as the attestation activity'. See also, ISO/IEC Guide 65:1996 (Ref. 20) and ISO/IEC 17021: 2011 (Ref. 19). The term ''certification body'' also is used by those in the food industry who currently rely on audits and certifications as part of their business practices. We believe this proposed language more clearly explains the role of accredited auditors/certification bodies and the requirements for issuance of certification under this program.

''Consultative audit'' means an audit of an eligible entity:

1. To determine whether such entity is in compliance with applicable requirements of the FD&C Act and industry standards and practices; and

2. The results of which are for internal purposes only and cannot be used to determine eligibility for a food or facility certification issued under this subpart or in meeting the requirements for an onsite audit of a foreign supplier under subpart L of this part.

This reflects the definition of ''consultative audit'' in section 808(a)(5) of the FD&C Act and emphasizes that the results of a consultative audit cannot be used in lieu of a regulatory audit to meet the criteria for issuance of food or facility certification under section 808(c)(2)(C) of the FD&C Act. It also incorporates language from proposed § 1.698, which would allow only reports of regulatory audits to be used by importers in meeting proposed verification requirements under the Foreign Supplier Verification Rule (FSVP) (to be codified in 21 CFR, part 1, subpart L).

''Direct accreditation'' means accreditation of a third-party auditor/certification body by FDA and is a term used in section 808(b)(1)(A)(ii) of the FD&C Act when describing FDA accreditation of third-party auditors/certification bodies, without the involvement of a recognized accreditation body. The distinction between direct accreditation and accreditation by an FDA-recognized accreditation body is relevant for some provisions of this rule. For example, under proposed § 1.656(b), a directly accredited auditor/certification body must send its annual self-assessment reports to FDA, while an auditor/certification body accredited by a recognized accreditation body must submit its annual self-assessment reports to the accreditation body, who is responsible for monitoring and ensuring its accredited auditors/certification bodies take timely and effective corrective actions, where necessary. FDA will access the accredited auditor/certification body self-assessments in monitoring recognized accreditation bodies and in conducting the periodic monitoring required by section 808(f)(2) of the FD&C Act. This definition will help accredited auditors/certification bodies determine which requirements apply to them.

''Eligible entity'' means a foreign entity that chooses to be subject to a food safety audit by an accredited auditor/certification body. Eligible entities include foreign facilities subject to the registration requirements of 21 CFR part 1, subpart H. The definition of ''eligible entity'' corresponds to section 808(a)(6) of the FD&C Act, which defines ''eligible entity'' as including (and thus not limited to) foreign facilities subject to the registration requirements of section 415 of the FD&C Act (21 U.S.C. 350d).

We seek comment on whether to provide examples of specific types of entities that may meet the definition of eligible entity. For example, are foreign cooperatives [13] that aggregate product, such as fruits or vegetables, the types of entities that should be able to seek audits and certification under this program? We note that the National Organic Program (NOP) administered by the U.S. Department of Agriculture's (USDA's) Agricultural Marketing Service (AMS), allows producers who are located in geographic proximity, who are organized under a single management and marketing system and whose farms are ''uniform in most ways'' to be certified as a group (Ref. 27).[14] We seek comment on whether these NOP criteria are relevant in determining whether a foreign cooperative is an ''eligible entity'' under this proposed rule, Are there other types of foreign entities or facilities that should be eligible to seek audits and certification under the FDA program?

''Facility'' means any structure, or structures of an eligible entity under one ownership at one general physical location, or, in the case of a mobile facility, traveling to multiple locations, that manufactures/processes, packs, or holds food for consumption in the United States. Transport vehicles are not facilities if they hold food only in the usual course of business as carriers. A facility may consist of one or more contiguous structures, and a single building may house more than one distinct facility if the facilities are under separate ownership. The private residence of an individual is not a facility. Non-bottled water drinking water collection and distribution establishments and their structures are not facilities. This same definition of ''facility'' appears in subpart H (21 CFR 1.227(b)(2)).

''Facility certification'' means an attestation, issued for purposes of section 806 of the FD&C Act by an accredited auditor/certification body, after conducting a regulatory audit and any other activities necessary to establish that a facility meets the applicable requirements of the FD&C Act.

''Food certification'' means an attestation, issued for purposes of section 801(q) of the FD&C Act by an accredited auditor/certification body, after conducting a regulatory audit and any other activities necessary to establish that a food meets the applicable requirements of the FD&C Act.

These definitions reflect the requirements for, and purpose of, certification as described in section 808(c)(2)(B) and (c)(2)(C) of the FD&C Act, referencing sections 801(q) (food certification) and 806 (facility certification) of the FD&C Act. Food and facility certifications are the two types of certifications authorized by section 808 of the FD&C Act. Further, the food and facility certification definitions emphasize that certification is an attestation [15] by the accredited third-party auditor/certification body that it has: (1) Conducted a regulatory audit (and any other activities necessary to establish compliance); (2) verified that the specified criteria have been met; and (3) determined, based on the results of those activities, that food or facility certification under this program is appropriate.

Codex CAC/GL 20–1995 (Ref. 26) defines ''certification'' as the procedure by which certification bodies provide ''written or equivalent assurance that foods or food control systems conform to requirements.'' ISO/IEC 17000:2004 (Ref. 17) describes certification as an ''attestation'' related to products, processes, systems, or persons.[16]

We seek comment on our proposed definitions of ''facility certification'' and ''food certification'' and on whether the scope of these definitions is sufficiently broad to fulfill the objectives of section 808 of the FD&C Act. In addition, we seek comment on whether to allow groups meeting the NOP criteria (i.e., having multiple sites operating under a single management system and whose

[13] Under section 808 of the FD&C Act, foreign cooperatives are among the types of groups that are eligible to seek accreditation as third-party auditors, provided that they meet the standards and requirements for accreditation (e.g., for conflicts of interest).

[14] Per USDA, grower group certifications have historically been used for the certification of cooperatives located in geographical proximity, whose crops are marketed collectively. Primary crops produced by grower groups include coffee, cocoa, tea, spices, and tropical fruits (Ref. 27).

[15] We propose to use the word ''attestation'' in § 1.600 to characterize the nature of the statement that certification represents. This is the term used in ISO/IEC 17000:2004 (Ref. 20) and also is the term we use when characterizing the nature of our export certifications (Ref. 28). We believe that ''attestation'' is similar to ''assurance,'' which is the term used in Codex CAC/GL 20–1995 (Ref. 27).

[16] We are not defining ''facility certification'' or ''food certification'' as an ''approval'' by an accredited auditor/certification body or by (or on behalf of) FDA, nor do we intend for it to be interpreted as such. Among other reasons, we do not have preapproval authority for food, except for certain additives that are required by law to have our approval prior to marketing. Moreover, neither Codex CAC/GL 20–1995 (Ref. 27), nor ISO/IEC 17000:2004 (Ref. 20) uses the term ''approval'' in defining ''certification.''

farms are ''uniform in most ways,'' to be issued (group) food certifications, facility certifications, or both.

''Food safety audit'' means a regulatory audit or a consultative audit by an accredited auditor/certification body under this program. This term is used throughout section 808 of the FD&C Act, including in the definitions of ''audit agent,'' ''third-party auditor,'' and ''accredited third-party auditor.'' The definition of ''third-party auditor'' in section 808(a)(3) of the FD&C Act in particular, mentions regulatory and consultative audits in the context of food safety audits. Therefore, we used the definitions of ''consultative audit'' and ''regulatory audit'' contained in section 808(a)(5) and (a)(7) of the FD&C Act in developing a definition of ''food safety audit.''

Table 1 describes consultative audits and regulatory audits and the distinctions between them.

TABLE 1—TYPES AND CHARACTERISTICS OF FOOD SAFETY AUDITS UNDER THE PROPOSED RULE

Type of audit	Purpose	Report submitted to FDA?	Records access by FDA?
Regulatory Audit	For certification and report may be used under FSVP.	Yes Submitted no later than 45 days after the audit.	FDA may request submission at any time.
Consultative Audit	Internal purposes	No	FDA access under section 414 of the FD&C Act.

''Foreign cooperative'' means an entity that aggregates food from growers or processors that is intended for export to the United States. Section 808 of the FD&C Act does not provide a definition of ''foreign cooperative,'' so we relied upon the statutory description of foreign cooperatives in section 808(c)(1)(B) of the FD&C Act.

''Recognized accreditation body'' means an accreditation body that FDA has determined meets the applicable requirements and is authorized to accredit third-party auditors/certification bodies under this program. This definition is based in part on the definition of accreditation body in section 808 of the FD&C Act and incorporates the concept of ''recognition'' that also appears there. The term ''recognition'' is also used in section 422 of the FD&C Act (21 U.S.C. 350k), as amended by FSMA, to describe the status we will accord to a laboratory accreditation body that accredits laboratories for purposes of food testing under the FD&C Act.

We also use the term ''recognition'' in the 2009 guidance (Ref. 5) and in other FDA programs. In the 2009 guidance, which predates FSMA, we mentioned the possible future ''recognition'' of one or more third-party certification programs. Though FSMA directs us to structure our third-party program differently than we envisioned in 2009, the concept of ''recognition'' by FDA is similar.

''Regulatory audit'' is defined in the statute and means an audit of an eligible entity:

1. To determine whether such entity is in compliance with the provisions of the FD&C Act; and

2. The results of which are used in determining eligibility for food certification under section 801(q) of the FD&C Act or facility certification under section 806 of the FD&C Act. This definition includes language from proposed § 1.698, which would allow an importer to use a regulatory audit report in meeting proposed requirements for verification of a foreign supplier under subpart L of this part.

''Relinquishment'' means:

1. With respect to an accreditation body, a decision to cede voluntarily its authority to accredit third-party auditors/certification bodies as a recognized accreditation body; and

2. With respect to a third-party auditor/certification body, a decision to cede voluntarily its authority to conduct food safety audits and to issue food and facility certifications to eligible entities.

We included a definition of ''relinquishment'' in this proposed rule because we recognize that an accreditation body, once recognized, or a third-party auditor/certification body, once accredited, may decide to leave the program and would need a process to voluntarily exit the program. Relinquishment differs from revocation of recognition and withdrawal of accreditation, as it occurs on the initiative of the accreditation body or third-party auditor/certification body and not as a result of our finding good cause to remove its recognition or accreditation status. Analogous language on relinquishment of accreditation appears in our mammography regulations in 21 CFR 900.3.

''Self-assessment'' means a systematic assessment conducted by an accreditation body to determine whether it meets the recognition requirements in §§ 1.610 through 1.625, or by a third-party auditor/certification body to determine whether it meets the accreditation requirements in §§ 1.640 through 1.658. ''Self-assessment'' is defined in this proposed rule in a manner consistent with its use in our MFRPS for State food regulatory programs (Ref. 12). The MFRPS require States to conduct periodic self-assessments of their manufactured food regulatory programs against each of the 10 program standards. These self-assessments are designed to identify the strengths and weaknesses of the State program by determining the level of conformance with the program standards and are independently verified through an audit. The results of the initial self-assessments are used to develop an improvement plan, and subsequent self-assessments are used to track the State's progress toward meeting and maintaining conformance with the MFRPS.

The concept of self-assessment is used in international consensus standards as well. For example, ISO/IEC Guide 65:1996 (Ref. 20) requires a certification body to conduct periodic internal audits to verify that its quality system is implemented and effective, that corrective actions are taken in a timely and appropriate manner, and that records of such reviews are maintained. Both ISO/IEC 17011:2004 (Ref. 18) and ISO/IEC 17021:2011 (Ref. 19) require internal audits as well. Self-assessments are a valuable component of a continuous improvement process under our standards and the voluntary consensus standards described in this preamble.

''Third-Party Auditor'' means a foreign government, agency of a foreign government, foreign cooperative, or any other third party that is eligible to be considered for accreditation to conduct food safety audits and to certify that eligible entities meet the applicable requirements of the FD&C Act. A third-party auditor may be a single individual or an organization. A third-party auditor may use audit agents to conduct food safety audits. Third-Party Auditor has the same meaning as Certification Body as that term is defined in this subpart.

The definition of ''third-party auditor'' is based on section 808 of the FD&C Act and clarifies our role in direct accreditation and the relationship between audits and certifications under section 808 of the FD&C Act. For the reasons explained in the preamble discussion of the definition of ''certification body,'' ''third-party auditor'' will have the same meaning as ''certification body'' for purposes of this rule.

b. *Who is subject to this subpart? (Proposed § 1.601).* This proposed rule would apply to those accreditation bodies, third-party auditors/certification bodies, and eligible entities that seek to participate in our program for third-party food safety audits and certification. Participating is voluntary; however any accreditation body wishing to accredit third-party auditors/certification bodies under our program would have to comply with the applicable requirements of the final rule. Under the FDA program, any third-party auditor/certification body wishing to conduct food safety audits and issue food and facility certifications and any eligible entity that seeks a food safety audit or food or facility certification would have to comply with the applicable requirements of the final rule.[17]

This proposed rule would codify a limited exemption created by section 116 of FSMA (21 U.S.C. 2206) applicable to certification of food under section 801(q) of the FD&C Act. Section 116(a) of FSMA states that, except as provided by certain listed sections in the FSMA, nothing in FSMA, or the amendments made by FSMA, will be construed to apply to a facility that (1) under the Federal Alcohol Administration Act (27 U.S.C. 201 *et seq.*) or chapter 51 of subtitle E of the Internal Revenue Code of 1986 (26 U.S.C. 5001 *et seq.*) is required to obtain a permit or to register with the Secretary of the Treasury as a condition of doing business in the United States; and (2) under section 415 of the FD&C Act is required to register as a facility because such facility is engaged in manufacturing, processing, packing, or holding one or more alcoholic beverages (with respect to the activities of such facility that relate to the manufacturing, processing, packing, or holding of alcoholic beverages).

Section 116(b) of FSMA provides that section 116(a) does not apply to a facility engaged in the receipt and distribution of any non-alcohol food, except that section 116(a) does apply to a facility described in section 116(a) that receives and distributes non-alcohol food, provided such food is received and distributed (1) in a prepackaged form that prevents any direct human contact with such food, and (2) in amounts that constitute not more than 5 percent of the overall sales of such facility, as determined by the Secretary of the Treasury.

Section 116(c) of FSMA provides that, except as provided in section 116(a) and (b), section 116 cannot be construed to exempt any food, other than alcoholic beverages, as defined in section 214 of the Federal Alcohol Administration Act (27 U.S.C. 214), from the requirements of FSMA (including amendments made by FSMA).

The Preventive Controls proposed rule includes provisions implementing the exemptions provided in section 116 of FSMA to establish by regulation the reach of the exemptions. As discussed in the preamble to the Preventive Controls proposed rule, FDA tentatively concludes the following regarding the reach of the exemptions for the purposes of that rule:

- The phrase ''obtain a permit or register'' should be interpreted broadly, to include not only facilities that must obtain what is technically named a ''permit'' or must ''register'' with Treasury, but also those facilities that must adhere to functionally similar requirements as a condition of doing business in the United States, namely, by submitting a notice or application to Treasury and obtaining Treasury approval of that notice or application.
- The exemption would apply not only to domestic facilities that are required to secure a permit, registration, or approval from Treasury under the relevant statutes, but also to foreign facilities of a type that would require such a permit, registration, or approval if they were domestic facilities.
- Activities related to alcoholic beverages (including the manufacturing, processing, packing, or holding of alcoholic beverages) at facilities within the scope of section 116(a) of FSMA would not be subject to section 418 of the FD&C Act. Activities related to foods other than alcoholic beverages (including the receiving, manufacturing, processing, packing, holding, and distributing of such foods) would be subject to section 418 even if those activities occur at facilities that are otherwise within the scope of section 116(a) (unless they qualify for another exemption or are in prepackaged form and constitute 5 percent or less of the facility's overall sales). (For clarity, we use the term ''food other than alcoholic beverages'' rather than ''non-alcohol food'' in the Preventive Controls proposed rule and in this document.)
- Section 418 of the FD&C Act does not apply to the manufacturing, processing, packing, or holding of food other than alcoholic beverages to the extent that it is physically inseparable from the manufacturing, processing, packing, or holding of alcoholic beverages.

Section 116 of FSMA is premised in part upon status as a facility required to register under section 415 of the FD&C Act (section 116(a)(2) of FSMA). As provided in section 808, eligible entities include foreign facilities registered under section 415 of the FD&C Act.

Therefore, to implement the exemption in section 116 of FSMA, under proposed § 1.601(d)(1), certification of food under section 801(q) of the FD&C Act would not apply with respect to alcoholic beverages from an eligible entity that is a facility that meets the following two conditions:

- Under the Federal Alcohol Administration Act or chapter 51 of subtitle E of the Internal Revenue Code of 1986 (26 U.S.C. 5001 *et seq.*), the facility is a foreign facility of a type that, if it were a domestic facility, would require obtaining a permit from, registering with, or obtaining approval of a notice or application from the Secretary of the Treasury as a condition of doing business in the United States; and
- Under section 415 of the FD&C Act, the facility is required to register as a facility because it is engaged in manufacturing/processing one or more alcoholic beverages.

Proposed § 1.601(d)(2) specifies that certification of food under section 801(q) of the FD&C Act also would not apply with respect to food other than alcoholic beverages from a facility described in paragraph (d)(2), provided such food:

- Is in prepackaged form that prevents any direct human contact with such food; and
- Constitutes not more than 5 percent of the overall sales of the facility, as determined by the Secretary of the Treasury.

This exemption does not apply to facility certification required by section 806 of the FD&C Act.

We request comment on our proposed exemption of alcoholic beverages and food other than alcoholic beverages under the conditions specified in proposed § 1.601(d).

As described in the ''Summary of Major Provisions of the Proposed Rule,'' this rule would apply only to entities

[17] The terms, ''third-party auditor/certification body,'' ''consultative audit,'' ''regulatory audit,'' ''food certification,'' ''facility certification,'' and ''eligible entity'' are defined under this proposed rule.

that voluntarily participate in our accredited third-party audits and certification program, which would be the following: (1) Accreditation bodies seeking recognition, or recognized, under this program; (2) third-party auditors/certification bodies (including their audit agents) that seek accreditation, or are accredited under this program; and (3) eligible entities that seek food safety audits from, or that are audited or certified by, accredited auditors/certification bodies under this program, except for an eligible entity that meets the criteria for exemption under section 116 of FSMA.

We invite comment on the scope of this proposed rule, including comments on its anticipated effects on accreditation bodies and third-party auditors/certification bodies already performing these activities, or that may be interested in doing so. We also seek comment on its anticipated effect on foreign food facilities and other eligible entities that are currently audited by third-party auditors/certification bodies.

2. Recognition of Accreditation Bodies

This rule would establish the following: (1) The eligibility requirements for an accreditation body to be authorized (''recognized'') by FDA to accredit third-party auditors/certification bodies under the accredited third-party audits and certification program; (2) requirements on recognized accreditation bodies for activities conducted under our program; and (3) procedures FDA and accreditation bodies will follow relating to recognition, including application, renewal, revocation, voluntary relinquishment, and reinstatement of recognition.

TABLE 2—PROPOSED REQUIREMENTS FOR ACCREDITATION BODIES

Proposed rule section	Title
Recognition of accreditation bodies under this subpart	
1.610	Who is eligible for recognition?
1.611	What legal authority must an accreditation body have to qualify for recognition?
1.612	What competency and capacity must an accreditation body have to qualify for recognition?
1.613	What protections against conflicts of interest must an accreditation body have to qualify for recognition?
1.614	What quality assurance procedures must an accreditation body have to qualify for recognition?
1.615	What records procedures must an accreditation body have to qualify for recognition?
Requirements for recognized accreditation bodies under this subpart	
1.620	How must a recognized accreditation body assess third-party auditors/certification bodies seeking accreditation?
1.621	How must a recognized accreditation body monitor the performance of auditors/certification bodies it accredits?
1.622	How must a recognized accreditation body monitor its own performance?
1.623	What reports and notifications must a recognized accreditation body submit to FDA?
1.624	How must a recognized accreditation body protect against conflicts of interest?
1.625	What records requirements must a recognized accreditation body meet?
Procedures for recognition of accreditation bodies under this subpart	
1.630	How do I apply to FDA for recognition or renewal of recognition?
1.631	How will FDA review applications for recognition and for renewal of recognition?
1.632	What is the duration of recognition?
1.633	How will FDA monitor recognized accreditation bodies?
1.634	When will FDA revoke recognition?
1.635	How do I voluntarily relinquish recognition?
1.636	How do I request reinstatement of recognition?

Section 808 of the FD&C Act directs us to establish a system for recognition of accreditation bodies to accredit third-party auditors/certification bodies and generally describes the roles and responsibilities of recognized accreditation bodies under the accredited third-party audits and certification program. The statute requires each recognized accreditation body to: (1) Ensure that third-party auditors/certification bodies (and audit agents) meet FDA's model accreditation standards; (2) perform such reviews and audits necessary to determine that a third-party auditor/certification body meets the statutory requirements for accreditation; [18] (3) require a third-party auditor/certification body to agree to issue certifications in a form required by FDA, as a condition of accreditation; and (4) submit to FDA a list of all third-party auditors/certification bodies it accredited (and the audit agents of each).

a. *Who is eligible for recognition? (Proposed § 1.610).* This proposed rule would establish eligibility requirements an accreditation body would have to meet to qualify for recognition by FDA under the accredited third-party audits and certification program. Proposed § 1.610 states that an accreditation body is eligible for recognition if it can demonstrate that it meets requirements relating to legal authority, competency, capacity, conflicts of interest, quality assurance, and records in proposed §§ 1.611 through 1.615.

In developing this proposed rule, we considered eligibility requirements that would help us ensure that accreditation bodies seeking recognition—whether public or private, newly formed or long standing—are sufficiently qualified to accredit third-party auditors/certification bodies under our program. We considered the approach taken by NIST in its National Voluntary Conformity Assessment Systems Evaluation (NVCASE) Program, which is a voluntary program to evaluate and recognize organizations which support conformity assessment activities (Ref. 28). The NVCASE program handbook states that ISO/IEC 17011:2004 (Ref. 18) provides that the basic general criteria

[18] See section 808(c)(1)(A) and (c)(1)(B) of the FD&C Act.

that an accreditor of certification bodies must satisfy for NVCASE recognition (Ref. 28). We have tentatively concluded that key elements of ISO/IEC 17011: 2004 (Ref. 18) provide an appropriate basis for these requirements.[19] We also considered our 2009 FDA guidance (Ref. 5),[20] which states that conformance to ISO/IEC 17011:2004 (Ref. 18) helps provide assurance of the reliability and competence of accreditation bodies.

We also considered current food industry practices. For example, GFSI requires food safety scheme owners to use accreditation bodies that comply with ISO/IEC 17011:2004 (Ref. 18) for GFSI-benchmarked food safety schemes (Ref. 29). In stakeholder meetings, some stakeholders have suggested that FDA consider requiring accreditation bodies participating in the accredited third-party audits and certification program to be signatories to a multilateral recognition agreement of the International Accreditation Forum (IAF). IAF is an organization for accreditors of conformity assessment bodies and is a counterpart to International Laboratory Accreditation Cooperation (ILAC), for laboratory accreditation bodies.[21] The IAF multilateral recognition arrangement (IAF–MLA) (Ref. 30) requires signatories to conform to ISO/IEC 17011:2004, among other things.

Unlike our established history with ILAC and ILAC signatories, our food and feed programs lack similar experience with the IAF. We have found few examples of Federal agencies that require accreditation bodies for conformity assessment bodies to be signatories to the IAF–MLA (for accreditation of product and management system certification) and that use signatory status as the sole criterion for accreditation bodies. For example, the Department of Health and Human Services is not requiring approved accreditors in its Health Information Technology certification program (45 CFR part 170) to be signatories to the IAF–MLA, although signatory status could be provided in support of an applicant's request for approval. By contrast, the Environmental Protection Agency's WaterSense program (Ref. 31) requires product accreditors to be signatories to the IAF–MLA (Ref. 30). The WaterSense program is not a regulatory program; rather, it is a partnership program.

We do not have adequate information at this time to propose to require accreditation bodies participating in the accredited third-party audits and certification regulatory program to be IAF–MLA signatories—whether as the sole requirement for recognition under § 1.610 or as one of several factors in support of recognition. We have, however, tentatively concluded that documented conformance to ISO/IEC 17011:2004 (Ref. 18) would be relevant in demonstrating that an accreditation body is qualified for recognition. We invite comments and examples (in particular, examples from regulatory programs) in support of, or opposition to, using an accreditation body's status as a signatory to an IAF MLA as the sole criterion for recognition or as a factor weighing in favor of an application for recognition under the accredited third-party audits and certification program.

b. *What legal authority must an accreditation body have to qualify for recognition? (Proposed § 1.611).* This proposed rule would require accreditation bodies seeking recognition to demonstrate they have sufficient legal authority to adequately assess third-party auditors/certification bodies for accreditation and in conducting oversight of them, once accredited.

Proposed § 1.611 would allow both governmental bodies, with accreditation authority inherent in their roles as public officials, and private bodies, who have authority under contracts with third-party auditors/certification bodies, to qualify for recognition if they have the sufficient authority to conduct accreditation activities. This includes adequate authority to access records; to conduct onsite performance assessments, reassessments, and surveillance; and to grant, modify, and remove accreditation status.

ISO/IEC 17011:2004 (Ref. 18) contains similar requirements for bodies accrediting third-party auditors/ certification bodies for product and management system certification. Clause 4.1 requires accreditation bodies to be registered legal entities and explains that governmental accreditation bodies are considered legal entities because of their governmental status. Clause 4.2.2 states that accreditation bodies must have the authority and responsibility to decide on granting, maintaining, extending, reducing, suspending, and withdrawing accreditation.[22]

Proposed § 1.611(b) would require an accreditation body to demonstrate that it has the adequate legal authority to meet the requirements for a recognized accreditation body in proposed §§ 1.611 through 1.615, including assessing third-party auditors/certification bodies for accreditation, monitoring accredited auditors/certification bodies, perform self-assessments, submitting reports and notifications to FDA, implementing procedures to protect against conflicts of interest, establishing and maintaining records, and following the applicable procedural requirements of our program.

We are not proposing to require a newly recognized accreditation body to wait a certain period of time before beginning to conduct accreditation activities under our program. Its accreditation authority goes into effect at the moment of recognition. Therefore, we believe that an accreditation body seeking recognition must demonstrate its capacity to fulfill the roles and responsibilities of recognition, if granted. We believe that an accreditation body could meet this requirement by providing documentation of its authority to perform activities required by proposed §§ 1.611 through 1.615. We expect this documentation to be provided primarily in the form of standard language for contracts with eligible entities under the FDA accredited third-party audits and certification program. However, we will accept other types of documents (e.g., Standard Operating Procedures) that can (individually or as part of a set of documents) demonstrate that the accreditation body has adequate legal authority to conduct the activities required by proposed § 1.611 through 1.615.

We invite comment on our proposal to require accreditation bodies to have demonstrable evidence to support a conclusion that they would have adequate legal authority to meet our requirements (e.g., authority to withdraw accreditation for cause), if recognized. We also seek examples of other types of evidence that might

[19] ISO/IEC 17011:2004 contains requirements that are not applicable to our program (e.g., liability arrangements). While an accreditation body would not need to conform to ISO/IEC 17011:2004 to qualify for recognition under our program, an accreditation body that satisfies the requirements of ISO/IEC 17011:2004 could use that in demonstrating it meets the recognition requirements in this rule.

[20] We intend to withdraw the 2009 Guidance upon publication of a final rule for accredited third-party audits and certification under section 808 of the FD&C Act.

[21] The ILAC is an international body, established in 1977, to help ensure the competency, independence, rigor, and objectivity of accreditation bodies that accredit laboratories against international standards. The ILAC-mutual recognition agreement requires signatories to conduct their activities in accordance with ISO/IEC 17011:2004. FDA laboratory programs have worked with ILAC and other ILAC signatories for many years.

[22] ISO/IEC 17011:2004 also contains requirements relating to documentation of the roles and responsibilities of accreditation body management and personnel involved in accreditation activities. Matters such as these will be more fully explained in the Model Accreditation Standards we plan to issue.

demonstrate the scope of an applicant's legal authority. For comments opposing this requirement, we request comment on what, if any, requirements we should put in place to ensure that an accreditation body applying to us for recognition would be equipped, upon recognition, to perform the obligations required under the program.

c. *What competency and capacity must an accreditation body have to qualify for recognition? (Proposed § 1.612).* This rule would require accreditation bodies seeking recognition to demonstrate adequate resources to fully implement its accreditation program. Under proposed § 1.612, an accreditation body must have adequate numbers of personnel or other agents with relevant knowledge, skills, and experience to adequately assess and monitor third-party auditors/certification bodies. The accreditation body also would have to show it has adequate financial resources for its operations. In the guidance, we will explain the types of expertise and training we expect to see when reviewing accreditation body records and conducting onsite performance assessments. We also will explain the types of documentation that might be used to demonstrate financial viability.

ISO/IEC 17011: 2004, clause 6.1 (Ref. 18) requires accreditation bodies to have a sufficient number of competent personnel (internal and external) with the educational background, technical qualifications, training, skills, and experience necessary for the accreditation body's activities. Clause 4.5.2 requires accreditation bodies to demonstrate they have financial resource required for accreditation activities.[23]

Under proposed § 1.612(b) an accreditation body seeking to qualify for recognition must demonstrate that it has the capability to adequately assess third-party auditors/certification bodies seeking accreditation and to monitor accredited auditors/certification bodies through performance assessments. It also must be capable of submitting reports and notifications to FDA in the manner we propose and to follow the procedural requirements under our program. As previously explained, an accreditation body will be authorized to begin accreditation activities under our program immediately upon recognition. Therefore, we need to have adequate assurance of its ability to meet the competency and capacity requirements of a recognized accreditation body when deciding whether to grant recognition.

d. *What protections against conflicts of interest must an accreditation body have to qualify for recognition? (Proposed § 1.613).* This proposed rule would require accreditation bodies to have established programs to safeguard against conflicts of interest that might compromise their objectivity and independence from third-party auditors/certification bodies. Proposed § 1.613 would require accreditation bodies seeking recognition to have written measures to safeguard against financial conflicts of interest between the accreditation body (and its officers, personnel, and other agents) and third-party auditors/certification bodies (and their officers, personnel, and other agents). Without these conflict of interest requirements, we believe it would be difficult for an accreditation body to demonstrate adequate independence in accrediting auditors/certification bodies, as required under our accredited third-party auditing and certification program.

ISO/IEC 17011: 2004, clause 4.3.4 (Ref. 18) requires accreditation bodies to ensure that personnel and committees that could influence the accreditation process act objectively and be free from any undue commercial pressures that could compromise impartiality.[24]

Under proposed § 1.613(b), an accreditation body seeking recognition must demonstrate the capability to meet the conflict of interest requirements that would apply under § 1.624, upon recognition. This measure is necessary to help ensure that any accreditation activities conducted after recognition would be considered objective and independent under our program.

e. *What quality assurance procedures must an accreditation body have to qualify for recognition? (Proposed § 1.614).* This proposed rule would require accreditation bodies seeking recognition to have written quality assurance procedures in place. Proposed § 1.614(a) requires an accreditation body seeking recognition to have a program for monitoring and assessing the performance of its officers, personnel, and other agents and for assessing the effectiveness of its accreditation program. The program must include procedures for identifying areas for improvement and quickly executing corrective actions.

ISO/IEC 17011 (Ref. 18) requires accreditation bodies to establish procedures for internal audits (clause 5.7.1) and to identify nonconformities in its operations (clause 5.5), opportunities for improvement, and preventive actions to address root causes (clause 5.6). Clause 5.8 requires periodic management reviews.

Proposed § 1.614(b) requires the accreditation body to demonstrate it has the capability to meet the quality assurance requirements of § 1.622, for performing annual self-assessments against our requirements and reporting the results of such self-assessments. The guidance we plan to issue will discuss the elements of an effective quality assurance program for accreditation bodies.

f. *What records procedures must an accreditation body have to qualify for recognition? (Proposed § 1.615).* This proposed rule would require accreditation bodies seeking recognition to have written records procedures in place. Under proposed § 1.615(a), an accreditation body would have to demonstrate that it has written procedures for establishing, controlling, and retaining records on its accreditation program and activities. While we are not proposing that an accreditation body must have retained records for a specified period of time prior to its recognition, we believe it is necessary for an accreditation body to have maintained records for such length of time to allow us to adequately assess its program and performance to determine whether it is qualified for recognition. The accreditation body also must maintain records as required by its existing legal obligations. Our guidance will explain these recordkeeping, document control, and retention requirements.

Clause 5.4.1 of ISO/1EC 17011: 2004 (Ref. 18) requires accreditation bodies to establish procedures for identification, collection, filing, storage, maintenance, and disposal of records. Under clause 5.4.2, records procedures must require records to be retained for a period consistent with the accreditation body's contractual and legal obligations. The accreditation body must have procedures to control internal and external documents relating to its activities, under clause 5.3.[25]

Proposed § 1.615(b) would require an accreditation body seeking recognition to demonstrate its capability to meet the requirements of a recognized accreditation body. This would include,

[23] ISO/IEC 17011:2004 contains some requirements that are not applicable to our program. For example, it contains requirements relating to liability coverage.

[24] ISO/IEC 17011 contains additional requirements relating to opportunities for involvement by interested parties and the manner in which the accreditation body presents its services. Such matters are beyond the scope of our program.

[25] Requiring accreditation bodies to exert control over external documents relating to its accreditation activities would be inconsistent with our program.

for example, capacity for maintaining records for 5 years, which is the maximum length for which recognition could be granted. It also requires recognized accreditation bodies to give us access to records on activities conducted under our program. Clause 4.4 of ISO/IEC 17011: 2004 (Ref. 18) requires accreditation bodies to have adequate arrangements to maintain the confidentiality of information obtained through its accreditation activities. Confidential information about a third-party auditor/certification bodies must not be disclosed without the written consent of the auditor/certification body unless the law requires the information to be disclosed without such consent. Accreditation bodies applying for recognition must demonstrate their capacity, if recognized, to grant us access to confidential information, including information contained in records, without prior written consent of the auditor/certification body involved. Having access to records relating to accreditation activities (including confidential information) under this subpart is necessary to ensure the rigor, credibility, and independence of the program.

3. Requirements for Recognized Accreditation Bodies

TABLE 3—PROPOSED REQUIREMENTS FOR ACCREDITATION BODIES RECOGNIZED BY FDA

Proposed Rule Section	Title
1.620	How must a recognized accreditation body assess third-party auditors/certification bodies seeking accreditation?
1.621	How must a recognized accreditation body monitor the performance of auditors/certification bodies it accredits?
1.622	How must a recognized accreditation body monitor its own performance?
1.623	What reports and notifications must a recognized accreditation body submit to FDA?
1.624	How must a recognized accreditation body protect against conflicts of interest?
1.625	What records requirements must a recognized accreditation body meet?

Proposed §§ 1.620 through 1.625 contain the requirements that a recognized accreditation body would have to meet when conducting activities under our program.

a. *How must a recognized accreditation body assess third-party auditors/certification bodies seeking accreditation? (Proposed § 1.620).* This proposed rule would establish criteria and procedures a recognized accreditation body must use in assessing third-party auditors/certification bodies for accreditation.

Proposed § 1.620(a)(1) requires a recognized accreditation body to assess foreign governments/agencies by evaluating the food safety programs, systems, and standards of the government/agency to determine that the government/agency meets the eligibility requirements for accreditation under § 1.640(b), except where the criteria for direct accreditation in proposed § 1.670(a) are met.[26] Proposed § 1.620(a)(2) requires a recognized accreditation body to assess the internal systems and the training and qualifications of audit agents used by a foreign cooperative or other third party to determine that the cooperative/party meets the eligibility requirements for accreditation under § 1.640(c).

Proposed § 1.620(a)(1) and (a)(2) are based on section 808(c)(1) to (c)(3) of the FD&C Act, which distinguishes between the assessments of foreign governments/agencies and the assessments for foreign cooperatives/other third parties seeking accreditation. They also require a recognized accreditation body to assess any third-party auditor/certification body under the model accreditation standards we must issue under section 808(b)(2) of the FD&C Act. The model accreditation standards will specify the authority, competency, capacity, impartiality, quality assurance, and records that a third-party auditor/certification body must have to qualify for accreditation under our program.

Proposed § 1.620(a)(3) requires recognized accreditation bodies to observe a statistically significant number[27] of onsite food safety audits by a third-party auditor/certification body (or its audit agents) seeking accreditation. Correspondingly, ISO/IEC 17011: 2004, clause 7.7.3 (Ref. 18) requires an accreditation body's assessment team to witness the performance of a representative number of staff to provide assurance of the auditor's/certification body's competency.

Proposed § 1.620(b) requires a recognized accreditation body to impose three conditions on any accreditation under this program as follows:

- The third-party auditor/certification body must comply with the audit reporting requirements contained in proposed § 1.656, which is drawn from section 808(c)(3) of the FD&C Act (which makes it a condition of accreditation to prepare consultative audit reports within 45 days after conducting an audit and, for regulatory audits, to submit an audit report within 45 days after conducting an audit).
- The third-party auditor/certification body must agree to submit electronic certifications to FDA, where appropriate based on the results of a regulatory audit. Under section 808(c)(2)(A) of the FD&C Act, we have tentatively concluded that submission of electronic certification (as opposed to paper certification) is appropriate for the following reasons:
  - It would be too time-consuming and resource intensive to review paper-based facility certifications and might result delays that would frustrate the purpose of the VQIP program for expedited review and entry of products; and
  - Requiring submission and manual review of paper food and facility certifications would undermine to our efforts to use robust, integrated databases to replace manual review, analysis, and reporting of data.
- A third-party auditor/certification body would have to comply with the requirement in section 808(c)(4)(A) of the FD&C Act to notify us immediately upon discovering, during a food safety audit, a condition that could cause or contribute to a serious risk to the public health, as a condition of its accreditation. Having timely notification of such risks directly affects our ability to respond rapidly to protect the public health. We believe this notification

[26] Under section 808(b)(1)(A)(ii) of the FD&C Act, we may begin to directly accredit third-party auditors/certification bodies if we have not identified and recognized an accreditation body to meet the requirements of the section within 2 years after establishing the system.

[27] Generally speaking, we consider ''statistical significance'' to be an interpretation of statistical data indicating that an occurrence was likely the result of a causative factor and not simply a chance result. With observations of a statistically significant number of accredited auditors/certification bodies, recognized accreditation bodies will be able to exert an appropriate degree of oversight of its accredited auditors/certification bodies, using the data to help determine whether its accreditation program and activities are functioning appropriately.

requirement is of such a critical nature that, we are proposing to require compliance as a condition of accreditation. We seek comment on our tentative conclusion to require compliance with section 808(c)(4)(A) of the FD&C Act a condition of accreditation.

Proposed § 1.620(c) requires recognized accreditation bodies to maintain records relating to its accreditation activities under the program. These include records on any denial of accreditation and on any withdrawal, suspension, or decision to reduce the scope of an accreditation for cause.[28] Such records must include the name and contact information for such certification body, the scope of accreditation denied, withdrawn, suspended, or reduced, and the basis for the action. Having access to records on denials of accreditation and actions taken due to nonconformities will help us in assessing the performance of the recognized accreditation body and also will allow us to determine whether poorly performing third-party auditors/certification bodies are attempting to ''shop'' for favorable accreditation decisions elsewhere. Both are important for our oversight of the program.

In proposed § 1.620(d), we require recognized accreditation bodies to have written procedures in place to consider appeals from third-party auditors/certification bodies to adverse accreditation decisions. The written procedures must offer protections similar to those afforded by FDA under proposed §§ 1.692 and 1.693 and include requirements to make the appeals procedures publicly available, have the appeal investigated and decided upon by people different than those involved in the subject matter of the appeal, notify the auditor/certification body of the final decision on the appeal, and maintain records on the appeal, the final decision, and the basis for the decision. This provision is analogous to clause 7.10.2 of ISO/IEC 17011:2004 (Ref. 18), which requires accreditation bodies to establish similar procedures for handling appeals by auditors/certification bodies. We emphasize that we are not proposing to review a decision by a recognized accreditation body to deny, withdraw, suspend, or reduce an accreditation, nor do we propose to consider appeals from third-party auditors/certification bodies to such actions by recognized accreditation bodies. We have considered the language of section 808 of the FD&C Act and tentatively concluded that it does not require us to review such decisions. We believe our proposal is appropriate and consistent with international standards that identify these as matters between the recognized accreditation body and the third-party auditor/certification body affected by the decision. Comments suggesting alternatives should provide the following: (1) A detailed legal rationale for us to review and decide on a challenge to an accreditation decision of a recognized accreditation body, including the authority to compel a recognized accreditation body to grant an accreditation and to conduct the ongoing monitoring of the auditor/certification body required under this FDA program; (2) a description of the procedures FDA should follow, including whether to compile an administrative record based on documents from the accreditation body and the third-party auditor/certification body, whether to accept new evidence or conduct its own investigation, and whether to conduct a public hearing; and (3) a prioritization of FDA's program activities as between, for example, monitoring the performance of accredited auditors/certification bodies under section 808(f) of the FD&C Act and determining whether a recognized accreditation body correctly denied an application for accreditation.

b. *How must a recognized accreditation body monitor the performance of auditors/certification bodies it accredits? (Proposed § 1.621).* This proposed rule describes the type and frequency of monitoring a recognized accreditation body would have to perform for third-party auditors/certification bodies it accredits under our program.

Proposed § 1.621 requires a recognized accreditation body to annually evaluate each of its accredited auditors/certification bodies to determine whether it is complying with the applicable provisions of this rule. For each such auditor/certification body, the accreditation body must review its self-assessments (including information on compliance with the conflict of interest requirements under § 1.657); its regulatory audit reports and notifications to FDA (and supporting documents for each), and any other information reasonably available to the accreditation body regarding the compliance history of eligible entities the accredited auditor/certification body certified or that would otherwise be relevant in determining its compliance with this rule.

The monitoring requirements we propose are consistent with section 808(f)(2) of the FD&C Act, which requires us to evaluate each accredited auditor/certification body by reviewing its regulatory audit reports and the compliance history (as available) of eligible entities it certified, and to take any other necessary measures. We believe these elements are equally important for recognized accreditation bodies to use when monitoring accredited auditors/certification bodies under our program. We believe that the conflict of interest disclosures and public health notifications are of such importance to the reliability and credibility of the program that recognized accreditation bodies should review them as well. To provide flexibility to a recognized accreditation body that is aware of additional information relevant to its evaluation, and consistent with the last clause in section 808(f)(2) of the FD&C Act, we propose to allow the accreditation body to rely on other information relevant to its evaluation. We note that accreditation bodies need only consider information that is ''reasonably available'' to them. We do not expect an accreditation body to launch an investigation of each auditor/certification body it accredited, absent cause; however, we expect that accreditation bodies will actively monitor for public information about their accredited auditors/certification bodies and will not ignore public information about problems associated with one or more of this accredited auditors/certification bodies.

ISO/IEC 17011:2004, clause 7.11.3 (Ref. 18) requires accreditation bodies to plan for reassessment and surveillance of each accredited auditor/certification body at frequencies between 1 and 5 years, depending on the nature of reassessment and surveillance performed. In general, clause 7.11.3 requires these monitoring activities to occur every 2 years.

We have tentatively concluded that the assessments under proposed § 1.621 should be performed on an annual basis because formal reviews at that frequency, throughout the duration of an accreditation, will help the accreditation body determine whether the auditor/certification body continues to meet the applicable program requirements and the conditions of its accreditation. Not only will these assessments help ensure that accredited auditors/certification bodies individually comply with our requirements, but also can be used by

[28] Denial, withdrawal, suspension, and reduction in scope of accreditation differ from voluntary relinquishment of accreditation under proposed § 1.665, which is an action taken on the initiative of the auditor/certification body and is not based on a finding of nonconformity by its accreditation body.

the recognized accreditation body to identify trends and any deficiencies in its own performance or program.

We seek comment on our proposal and on whether the information we describe in § 1.621 will provide an appropriate basis for recognized accreditation bodies to use in evaluating auditors/certification bodies they accredited. Should we require recognized accreditation bodies to conduct witness audits or visits to the headquarters of each auditor/certification body it accredits under the program, or a subset thereof? For comments recommending other methods of performance assessment, we are interested in information on the potential costs and benefits associated with these alternatives.

c. *How must a recognized accreditation body monitor its own performance? (Proposed § 1.622).* This proposed rule would require recognized accreditation bodies conduct self-assessments on an annual basis and as required under proposed § 1.664(g) (following FDA withdrawal of accreditation of a third-party auditor/certification body it accredited).

Proposed § 1.622(a) requires a recognized accreditation body to evaluate the performance of its officers, employees, and other agents; compliance with applicable conflict of interest requirements; and any other aspects FDA requests, to determine whether the accreditation body meets our program requirements. Proposed § 1.622(b) requires a recognized accreditation body to observe onsite regulatory audits conducted by a statistically significant number of its accredited auditors/certification bodies.[29]

Based on these assessments, proposed § 1.622(c) requires recognized accreditation bodies implement corrective actions to address any area needing improvement that was identified through its self-assessment. The requirements in proposed § 1.622(a), (b), and (c) build on proposed § 1.614, which requires accreditation bodies to have quality assurance programs to qualify for recognition.

Proposed § 1.622(d) requires the accreditation body to prepare a written report of the findings of its self-assessment, including: (1) A statement disclosing the extent to which the accreditation body, and its officers, employees, and other agents, complied with the conflict of interest requirements in § 1.624 and other applicable requirements; and (2) identifying any corrective actions taken to address identified deficiencies. The timelines for a recognized accreditation body to submit its self-assessment reports to FDA appear in proposed § 1.623(b).

ISO/IEC 17011: 2004, clause 6.3.1 (Ref. 18) requires accreditation bodies to establish procedures for monitoring the performance of its personnel. Clauses 5.5 and 5.6 require accreditation bodies to establish procedures to identify nonconformities in its operations and any opportunities for improvement and to record the results of any corrective or preventive actions taken.

d. *What reports and notifications must a recognized accreditation body submit to FDA? (Proposed § 1.623).* This proposed rule would require recognized accreditation bodies to submit to FDA reports of its self-assessments and monitoring, as well as notice of matters affecting recognition and accreditation status. The reports and notifications described in proposed § 1.623 would have to be submitted electronically and in English.

Here and other places in this proposed rule, we suggest that any information for FDA be submitted in English. For applications or requests to FDA, we also propose to require that any translation or interpretation services necessary for us to process the application or request be made available by the submitter. We invite comment on our proposal to require submissions in English and to require translation or interpretation services as necessary. For comments in opposition, we seek input on how FDA might address translation and interpretation issues in a manner that is not overly burdensome or infeasible for the Agency and for submitters. How can FDA mitigate indirect effects on others submitting applications or requests? For example, is there a limit on the amount of time or resources FDA should spend translating and processing an application submitted in a foreign language? Are there other factors we should consider in deciding whether to require submissions in English and translation and interpretation services where necessary?

Proposed § 1.623(a) requires recognized accreditation bodies to submit reports of their annual assessments of accredited auditors/certification bodies under proposed § 1.621 within 45 days of completion of the assessment. The report must include updated lists of any audit agents used by such auditors/certification bodies. We believe that the results of such assessments will help us evaluate the performance of recognized accreditation bodies in reassessing their accredited auditors/certification bodies. The results also will help us perform our own monitoring of each accredited auditor/certification body. For example, having data about trends in performance deficiencies that the recognized accreditation body identified in its assessments, and the corrective actions that were implemented to address such deficiencies, gives us useful information on the accredited auditor/certification body and offers insight into how the recognized accreditation body oversees its accredited auditors/certification bodies.

Proposed § 1.623(b) requires recognized accreditation bodies to submit reports of their self-assessments under proposed § 1.622. These too will be useful to us in overseeing the recognized accreditation bodies. Annual self-assessments would have to be submitted within 45 days after completing the self-assessment. In establishing this timeframe, we considered the statutory requirement that accredited auditors/certification bodies submit reports of regulatory audits within 45 days after completing the audit. We tentatively concluded that the reports of formal assessments under § 1.621 and self-assessments under § 1.622, though different in nature from regulatory audits, are similarly important to our ability to ensure the rigor and credibility of the accredited third-party audits and certification program and thus should be submitted to us under a similar deadline.

Additionally, proposed § 1.623(b) provides that reports from self-assessments required by proposed § 1.664(g)(1) (following withdrawal of accreditation of a third-party auditor/certification body) would have to be submitted to FDA within 2 months after the date of withdrawal.

Proposed § 1.623(c) requires recognized accreditation bodies to immediately notify us when they grant accreditation to an auditor/certification body or when they withdraw, suspend, or reduce the scope of an accreditation under our program. Immediate notice is essential so that we can take timely action to begin to accept certifications from newly accredited auditors/certification bodies and to refuse to accept certifications from auditors/certification bodies no longer authorized to issue them. For each such notification, an accreditation body must provide contact information for the auditor/certification body, the name(s) of one or more of its officers, and the scope of accreditation. For withdrawal,

[29] As described in footnote 26, we generally interpret statistically significant numbers as those indicating that an occurrence was likely the result of a causative factor and not a chance result.

suspension, or reduction in scope, the recognized accreditation body must specify the basis for the decision and must update any other previously submitted information about the auditor/certification body. A recognized accreditation body also must immediately notify us if it has determined that an accredited auditor/certification body failed to comply with the requirements for issuance of a food or facility certification under § 1.653 and must include the basis for the determination and update any other information previously submitted about the auditor/certification body. Each type of notification must be made electronically and in English.

This information is essential to our oversight and management of the accredited third-party audits and certification program and the programs that rely on certifications issued by accredited third-party auditors/certification bodies. For example, section 808(c)(6)(A)(ii) of the FD&C Act requires us to withdraw accreditation from a certification body if we determine that the certification body no longer meets the requirements for accreditation. Having information on the reason(s) for withdrawal, suspension, or reduction in scope of an accreditation will help us in determining whether and how to conduct such evaluation. (Concerns regarding the performance of an accredited auditor/certification body are of a different nature than, for example, suspension of accreditation for failure to make timely fee payments.) Without information on the reason an accreditation was withdrawn, suspended, or reduced, we believe we will need to automatically consider withdrawal of accreditation whenever an accreditation is withdrawn, suspended, or reduced.

We request comment on our tentative conclusion that our oversight of the program will be enhanced by timely notice of accreditations, withdrawals, suspensions, and reductions in scope of accreditation by a recognized accreditation body, and of violations of proposed § 1.653.

In proposed § 1.623(d)(1), we require a recognized accreditation body to notify us within 30 days after denying accreditation to an auditor/certification body (in whole or in part) and including the basis for such denial. Proposed § 1.623(d)(1) is based on the requirement in proposed § 1.620(c), which requires recognized accreditation bodies to maintain records on any denial of accreditation under this program. We are not proposing to prohibit accreditation of an auditor/certification body previously denied accreditation, if the auditor/certification body is subject to a separate, full assessment and found to have adequately addressed the problems that led to the denial.

Proposed § 1.623(d)(2) requires recognized accreditation bodies to notify FDA within 30 days after making any significant change that would affect the manner in which it complies with the recognition requirements in §§ 1.610 to 1.625 and include an explanation for the purpose of the change. For example, the merger of two accreditation bodies, or the contracting out of assessment services at an accreditation body that previously employed in-house assessors, would be the types of changes that should be notified to us. The intent of this proposed requirement is to help ensure that we obtain timely notice of any changes that could affect the basis upon which we recognized the accreditation body. We are not seeking prior notice, nor are we suggesting that we have a role in approving or denying such change. We are, however, required by section 808(b)(1)(C) of the FD&C Act to revoke recognition of any accreditation body found not to be in compliance with section 808 of the FD&C Act. A significant change that prevents or undermines the accreditation body's compliance with this rule may result in revocation of recognition under proposed § 1.636.

e. *How must a recognized accreditation body protect against conflicts of interest? (Proposed § 1.624).* This proposed rule would require a recognized accreditation body to take certain steps to safeguard against conflicts of interest, including the requirement to implement a written conflict of interest program.

Section 808 of the FD&C Act requires us to establish the accredited third-party audits and certification program through, in large part, recognition of accreditation bodies to themselves accredit third-party auditors/certification bodies. Various stakeholders have expressed concern about possible conflicts of interest between the accreditation bodies and the third-party auditors/certification bodies seeking to participate in the program we implement. We believe that the credibility of the program will rest, in part, on whether we establish effective measures to protect against conflicts of interest among the program participants.

We considered ISO/IEC 17011:2004 (Ref. 18), which requires that all accreditation body personnel and committees that could influence the accreditation act objectively and be free from any undue commercial, financial, and other pressures that could compromise impartiality.

We believe that, in keeping with the purpose of section 808 of the FD&C Act, recognized accreditation bodies should be held to conflict of interest provisions of similar rigor to those placed on accredited third-party auditors/certification bodies under section 808(c)(5) of the FD&C Act and this proposed rule. Failure to have documented safeguards against conflicts of interest between a recognized accreditation body and the third-party auditor/certification body seeking its accreditation could undermine the system at its foundation by introducing the possibility of bias into the system. We believe that nothing short of rigorous safeguards will offer the transparency and credibility we believe necessary for our oversight of, and consumer confidence in, this accredited third-party audits and certification program.

Proposed § 1.624(a)(1) addresses conflicts involving ownership, management, or control of, or financial interests in, an auditor/certification body (including its officers, personnel, or other agents) or any affiliate, parent, or subsidiary of the auditor/certification body. We believe proposed § 1.624(a)(1) aligns with the requirement in section 808(c)(5)(A)(i) of the FD&C Act, which prevents an accredited third-party certification body from being owned, managed, or controlled by any person that owns or operates an eligible entity to be certified by such certification body. It also aligns with the requirement, in section 808(c)(5)(B)(i) of the FD&C Act, that an audit agent of an accredited third-party certification body not own or operate an eligible entity to be audited by such agent.

Proposed § 1.624(a)(2) prohibits officers, employees, or other agents of a recognized accreditation body from accepting any monies, gifts, gratuities, or items of value other than the payment of fees for accreditation services, reimbursement of direct costs associated with accreditation, and onsite meals, of a de minimis value, provided during an audit or assessment. We believe this is consistent with the requirements in section 808(c)(5)(A)(ii) and (c)(5)(B)(ii) of the FD&C Act, which requires an accredited auditor/certification body and its audit agents to have procedures to safeguard against financial conflicts of interest between any officer, employee, or audit agent and any eligible entity to be audited or certified.

We have tentatively concluded that onsite meals of a de minimis nature are not gifts, gratuities, or items of value

likely to influence the outcome of an audit or assessment, nor do we think they are likely to undermine the credibility of the program. Onsite meals may help expedite audits and assessments, because the accreditation body's assessors would not have to leave the premises for meals. We seek comment on whether to define de minimis value according to the limits established for U.S. Government employees for accepting gifts or gratuities.

Proposed § 1.624(b) imputes the financial interests of immediate family members to an officer, employee, or other agent of a recognized accreditation body. This proposed requirement is based on the approach we recommended in the 2009 Guidance with respect to conflicts of accredited certification bodies (Ref. 5). We believe that imposing a similar requirement on the immediate family of the officers, employees, or other agents of a recognized accreditation body will help to ensure the credibility of the accredited third-party audits and certification program at every level.

Proposed § 1.624(c) requires transparency in the payment of fees or reimbursement of direct costs by an accredited auditor/certification body to a recognized accreditation body. We have considered the types of disclosures that are necessary to help ensure the credibility of the program (and are consistent with existing disclosure laws). We recognize the amount or manner of payment by a third-party auditor/certification body for accreditation services may give rise to questions about whether the payment might affect the outcome of the accreditation process. Where, for example, a third-party auditor/certification body makes multiple payments to an accreditation body or makes payments under a different schedule than the accreditation body's usual practice, this may spur questions about whether those payments are linked to a favorable outcome for the third-party auditor/certification body.

We have tentatively concluded that, to maintain confidence in the program through transparency, recognized accreditation bodies disclose the timing of payments and reimbursement they receive from auditors/certification bodies, to the extent that such disclosures are consistent with existing law. While we do not believe that information on timing of payment of fees would be protected from disclosure under existing disclosure laws, we seek comment on this matter.

Proposed § 1.624(c) also requires recognized accreditation bodies to maintain on their Web sites an up-to-date list of each auditor/certification body accredited under this program, including the scope and duration of such each accreditation and date(s) on which the auditor/certification body paid any fee or reimbursement associated with such accreditation. Information on the timing of payments to recognized accreditation bodies for accreditation services is useful because it allows for analysis of such data in the aggregate. Unusual patterns in payments by one or more auditors/certification bodies may trigger a closer evaluation by us to determine whether the independence and objectivity of the recognized accreditation body may have been compromised by such payments. Requiring the recognized accreditation body to make information on the timing of payments available on its Web site creates transparency, thereby lending to the credibility of the program.

We seek comment on the tentative conclusions identified here, namely that we should require recognized accreditation bodies to: (1) Have a written program to safeguard against conflicts of interest; (2) include the interest of any affiliate, parent, or subsidiary of a third-party auditor/certification body within the scope of interests covered by the accreditation body's conflict of interest program; (3) impute the interests of immediate family members of an officer, employee, or other agent to such officer, employee, or other agent; and (4) maintain on its Web site a list of its accredited auditors/certification bodies, including duration and scope of each such accreditation, and information about the timing of payments by each such auditor/certification body. For interested parties recommending alternative approaches regarding public disclosure of payments, we request that such comments be accompanied by any examples or other information to describe or support the recommended approaches.

We also seek comment on whether there are conflicts other than financial interests of recognized accreditation bodies that should be addressed in these regulations. For any comment recommending that we address other types of conflicts, we are seeking recommended measures to address such conflicts, any documents or references that are available to support the recommendation, and input on whether similar measures should apply to accredited auditors/certification bodies under this program.

f. *What records requirements must a recognized accreditation body meet? (Proposed § 1.625).* This proposed rule identifies specific types of documents a recognized accreditation body would be required to establish, control, and maintain to document compliance with applicable requirements. The recognized accreditation body also would be required to provide FDA access to such records.

The records required by proposed § 1.625 include documents and data relating to the following: (1) Applications for accreditation and for renewal; (2) decisions to grant, deny, or suspend accreditation, or to reduce the scope of an accreditation; (3) challenges to adverse accreditation decisions; (4) monitoring of accredited auditors/certification bodies; (5) the accreditation body's self-assessments and corrective actions (which includes information on compliance with conflict of interest requirements under proposed § 1.624); (6) significant changes to the accreditation program that might affect compliance with this rule; (7) regulatory audit reports and supporting information from its accredited auditors/certification bodies; and (8) any other reports or notifications submitted under § 1.623. Proposed § 1.625 requires such records to be maintained, electronically and in English, for a period of 5 years. Requiring recognized accreditation bodies to maintain records in English is necessary to allow FDA to conduct timely and rigorous oversight of the accreditation bodies the Agency recognizes. We believe these are the types of records that accreditation bodies currently maintain and that such records are routinely maintained by accreditation bodies for a minimum of 5 years. In addition, by requiring recognized accreditation bodies to maintain their records for at least 5 years, it will help us ensure that we have an adequate basis for monitoring its performance and determining whether to renew recognition, which may be granted for a period of up to 5 years.

Proposed § 1.625(b) requires a recognized accreditation body to make such records available to us for inspection and copying upon the written request of an authorized FDA representative or, if requested by us electronically, to submit them electronically, in English, no later than 10 business days after the date of the request. Proposed § 1.625(c) prohibits a recognized accreditation body from preventing or interfering with our access to its accredited auditors/certification bodies and the records of the auditors/certification bodies.

We have tentatively concluded that the records identified and the records

maintenance and access requirements in proposed § 1.625 are necessary for us to adequately monitor recognized accreditation bodies, as directed by section 808(f) of the FD&C Act. We understand that accreditation bodies frequently include confidentiality provisions in standard contracts with third-party auditors/certification bodies. Many of those contract provisions may, in the past, have prevented disclosure of these records to us. If so, the requirements of proposed § 1.625, would require revisions to such contracts (and perhaps other documents) establishing and limiting the scope of an accreditation body's authority to grant us records access. We believe that such access is necessary for us to conduct the monitoring required by section 808(f) of the FD&C Act and to otherwise exercise adequate oversight of the accredited third-party audits and certification program. We seek comment on this tentative conclusion and on the specific requirements we propose in this section.

4. Procedures for Recognition of Accreditation Bodies

TABLE 4—PROPOSED PROCEDURES FOR ACCREDITATION BODIES

Proposed rule section	Title
1.630	How do I apply to FDA for recognition or renewal of recognition?
1.631	How will FDA review applications for recognition and for renewal of recognition?
1.632	What is the duration of recognition?
1.633	How will FDA monitor recognized accreditation bodies?
1.634	When will FDA revoke recognition?
1.635	How do I voluntarily relinquish recognition?
1.636	How do I request reinstatement of recognition?

a. *How do I apply to FDA for recognition or renewal of recognition? (Proposed § 1.630).* This proposed rule would establish procedures for accreditation bodies to follow when applying to FDA for recognition or for renewal of recognition. Under proposed § 1.630(a) (initial application) and § 1.630(b) (renewal), the applicant must demonstrate that it meets the eligibility requirements for recognition in proposed § 1.610. Applications for recognition and for renewal are subject to the same requirements for the form and manner of submission under proposed § 1.630(c) and (d). The accreditation body must submit a signed application, accompanied by any supporting documents, electronically and in English. We also propose to require an applicant to provide any translation or interpretation services we need to process the application. This may include providing translators or interpreters for FDA staff conducting onsite audits or assessments of the applicant.

We tentatively conclude that the application procedures in proposed § 1.630 are reasonable requirements for accreditation bodies to meet. We believe that an accreditation body having the competency and capacity to qualify for recognition under the criteria in proposed § 1.610 would be similarly capable of meeting the application requirements in proposed § 1.630. Requirements for electronic, English language communications are necessary for us to make well-informed and timely decisions on applications and to conduct appropriate oversight of accreditation bodies, once recognized. We seek comment on these conclusions and the proposed requirements of § 1.630.

b. *How will FDA review applications for recognition and for renewal of recognition? (Proposed § 1.631).* This proposed rule would establish the procedures we will follow in reviewing and deciding on applications for recognition and for renewal of recognition. Under proposed § 1.631(a), we will create an application queue, organized by the date on which each such application submission is complete. In the interest of fairness, we are proposing to order the queue on a first in, first out basis. We will inform applicants of deficiencies in application documentation. To encourage applicants to supply any missing information promptly, we will not place an application in the queue until it is complete. Allowing incomplete applications in the queue might block applications that are ready for review, but were submitted later in time.

We will inform an applicant once its application has been placed in the queue. We will review each recognition or renewal application to determine whether the applicant meets the eligibility requirements of proposed § 1.630(a) and (b). We anticipate that initial applications for recognition will require lengthier review times than renewal applications will. We will communicate anticipated processing periods to applicants. We are not, however, proposing to include specific timeframes for review, for the following reasons: (1) It is difficult to project the amount of resources that will be available for application review, as the program is authorized to be funded by user fees under section 808(c)(8) of the FD&C Act; and (2) we expect to become more efficient in processing applications as we gain experience but currently lack data to reasonably estimate the effect of efficiency gains on review times.

Proposed § 1.631(b), (c), and (d) describe the basis on which we will decide whether to approve a recognition or renewal application and explains that we will notify the applicant of our decision in writing. We may send the notice electronically.

If we approve an application, the notice will include any conditions we may impose on the recognition. (For example, we may adjust the date that an accreditation body's annual self-assessment would be due, if the anniversary date of its recognition would otherwise require the self-assessment to be submitted on a weekend.) If we deny a recognition or renewal application, we will explain the reason for our denial and will give the address and procedures for requesting that we reconsider.

Proposed § 1.631(e) applies only to applications for renewal of recognition and allows us to extend the length of an existing recognition to complete our review of the renewal application. We can extend the recognition until a specific date or may extend the recognition for as long as necessary for us to decide on the application.

c. *What is the duration of recognition? (Proposed § 1.632).* This proposed rule would allow us to grant recognition to an accreditation body for up to 5 years, though we will determine the length of recognition on a case-by-case basis.

In deciding that 5 years is the maximum appropriate length of recognition, we considered approaches

taken in other government programs. Another DHHS operating division, the Substance Abuse and Mental Health Services Administration (SAMHSA), approves accreditation bodies to accredit programs that use opioid agonist treatment medications. SAMHSA may approve an accreditation body for a period not to exceed 5 years (42 CFR 8.3). Under the FDA mammography program, we may approve accreditation bodies for terms of up to 7 years (21 CFR 900.3(g)).

We are proposing to recognize accreditation bodies for a period of up to 5 years, based in part on these examples. We do not expect to grant every recognition at the maximum duration. We believe that shorter terms of recognition may be appropriate in the early years of the program or for accreditation bodies with fewer years of experience accrediting auditors/ certification bodies for food safety auditing and certification. As we gain experience with the program, we may revisit this matter.

We seek comment on proposed § 1.632 and the factors we considered in developing it. We do not claim to have compiled an exhaustive list of government programs for approving accreditation bodies and are interested in comments offering other examples that are relevant to the type of program we are establishing. To the extent that an alternative term of recognition is suggested, we seek any information that can be provided in support of such alternative.

d. *How will FDA monitor recognized accreditation bodies? (Proposed § 1.633).* This proposed rule would establish the frequency and manner for our formal evaluations of recognized accreditation bodies. Proposed § 1.633 builds on the self-assessment requirements of proposed § 1.622, which are submitted to us under proposed § 1.623. Section 808(f)(1) of the FD&C Act requires us to reevaluate a recognized accreditation body at least once every 4 years to determine its compliance with applicable FDA requirements.

Proposed § 1.633(a) describes the timeframes in which we will conduct reevaluations: At least 4 years after the date of accreditation for an accreditation body recognized for a 5-year term, and the mid-term point for recognitions granted for less than 5 years. These represent the maximum times that may elapse before we conduct a formal reevaluation of a recognized accreditation body. We lack data to set a more definitive schedule for reevaluations but may be able to do so as we gain experience under the program. Proposed § 1.633(a) explains that we may perform additional performance evaluations of recognized accreditation bodies at any time.

Proposed § 1.633(b) describes the types of information we may gather as part of a performance evaluation. Section 808(f)(3) of the FD&C Act gives us authority to conduct onsite audits of eligible entities that have been issued certification by an accredited auditor/ certification body at any time, with or without the accredited auditor/ certification body present, and section 808(f)(4) gives us authority to take any other measures we deem necessary. Proposed § 1.633(b) explains that we may conduct onsite audits of eligible entities certified by the accreditation body's accredited auditors/certification bodies, as indicators of the effectiveness of the recognized accreditation body's performance, including its assessments and decisionmaking. These assessments and audits may be conducted at any time, with or without the accredited auditor/certification body present. We believe it is necessary for us to have the option to conduct onsite audits of certified eligible entities outside the presence of a recognized accreditation body with an interest in the outcome of FDA's evaluation. Therefore, proposed § 1.633(b) allows us to conduct onsite assessments of accredited auditors/ certification bodies at any time, with or without the recognized accreditation body present. We believe that such spot checks are useful in testing the program and ensuring compliance, which is the purpose of section 808(f) of the FD&C Act.

e. *When will FDA revoke recognition? (Proposed § 1.634).* This proposed rule would establish the criteria and procedures for revocation of recognition of an accreditation body. It also describes the effects (if any) of revocation on accreditations and certifications occurring prior to the revocation. Section 808(b)(1)(C) of the FD&C Act requires us to revoke the recognition of an accreditation body for failure to comply with section 808 of the FD&C Act and the implementing regulations in this subpart.

Proposed § 1.634 describes several circumstances that we believe each warrant revocation of recognition:

Under proposed § 1.634(a)(1), we will revoke recognition of any accreditation body that refuses to grant us access to records or to conduct audits, assessments, or investigations necessary to ensure the recognized accreditation body's continued compliance. Denial of access to perform our oversight functions would prevent us from meeting our statutory responsibilities for monitoring recognized accreditation bodies under section 808(f)(1) of the FD&C Act.

We will revoke recognition under proposed § 1.634(a)(2)(i) for failure to take timely and necessary corrective action after we withdraw accreditation of one of its accredited auditors/ certification bodies for unjustifiably certifying a facility or food that was linked to an outbreak with a reasonable probability of causing serious adverse health consequences or death in humans or animals. When we withdraw the accreditation of an auditor/ certification body, we believe its accreditor should promptly conduct an internal review to identify whether any problems in its accreditation program or performance may have caused or contributed to the circumstances leading to withdrawal and to effectively address any problems found. For example, we expect such an accreditation body to review its monitoring program to determine whether it should conduct more frequent onsite assessments of the auditors/certification bodies it accredited under our program.

We also will revoke recognition under proposed § 1.634(a)(2)(ii) for failure to take timely and necessary corrective action when the results of the accreditation body's self-assessment or the self-assessments or monitoring of one or more of its accredited auditors/ certification bodies identify a significant problem with the accreditation body's performance. This provision focuses on significant problems the accreditation body knew or should have known it needed to address through prompt and effective corrective actions. For example, we believe it appropriate to revoke the recognition of an accreditation body that ignores obvious, significant problems in its performance yet chooses to take no corrective action to address the problems.

In addition, we will revoke recognition under proposed § 1.634(a)(2)(iii) when a recognized accreditation body fails to promptly implement corrective actions we direct to bring the accreditation body into compliance. This provision is based on the requirement of section 808(b)(1)(C) of the FD&C Act to promptly revoke the recognition of an accreditation body found not to be in compliance with section 808 of the FD&C Act.

Proposed § 1.634(a)(3) allows us to revoke recognition when we determine that a recognized accreditation body has committed fraud or submitted material false statements to us. Fraud and falsehood undermine the credibility of the program and our ability to rely on

the certifications issued by auditors/certification bodies it accredited.

Proposed § 1.634(a)(4) describes circumstances that we believe warrant revocation but do not fit into the categories in proposed § 1.634(a)(1), (a)(2), and (a)(3), such as a lack of objectivity (demonstrated bias) in its activities or failure to adequately support one or more of its accreditation decisions. There may be unforeseen circumstances that we determine provide good cause for revocation of recognition for failure to comply with applicable requirements. Proposed § 1.634(a)(4) gives accreditation bodies notice of our intention to revoke recognition where we find good cause.

Proposed § 1.634(b) specifies that we may request records from the accreditation body or one or more of its accredited auditors/certification bodies to assist us in deciding whether to revoke recognition.

Proposed § 1.634(c)(1) establishes the procedures for us to notify the accreditation body of revocation of recognition and its opportunity to challenge the revocation in an informal hearing conducted under part 16 of our regulations. Part 16 hearings are used for, among other things, approval, reapproval, or withdrawal of approval of mammography accreditation bodies under 21 CFR 900.7. We believe part 16 hearings provide adequate process for accreditation bodies subject to revocation of recognition under this proposed rule. The notice of revocation also will identify the procedures for requesting reinstatement of recognition under proposed § 1.634(c)(1). Regardless of whether the accreditation body challenges its revocation or seeks reinstatement, under proposed § 1.634(c)(2), it must notify us of the location where the records required by proposed § 1.625 will be maintained.

Proposed § 1.634(d) addresses the possible effects of revocation of recognition on an auditor/certification body accredited prior to the revocation. Under proposed § 1.634(d)(1), FDA would notify any auditor/certification body accredited by an accreditation body whose recognition was revoked. The auditor's/certification body's accreditation will remain in effect provided that it conducts a self-assessment under proposed § 1.655 and reports its results to FDA within 2 months of the revocation under proposed § 1.656(b). We believe the accredited auditor/certification body that complies with these requirements should not face adverse consequences when its accreditation body fails to meet its obligations as a recognized accreditation body. Requiring the accredited auditor/certification body to verify that it is in compliance with the applicable requirements through self-assessment and reporting would help provide confidence that the auditor's/certification body's program is under control during the time it is transitioning from one accreditation body to another. The auditor/certification body would have 1 year after the revocation of its accreditation body's recognition to become reaccredited, under proposed § 1.634(d)(1)(ii). We believe this gives the auditor/certification body sufficient time to find a new recognized accreditation body and to go through its accreditation process, but would not allow a prolonged period of auditing and certification activity without the immediate oversight of an accrediting body. Proposed § 1.634(d)(2) explains that FDA may withdraw accreditation of an auditor/certification body whenever FDA finds good cause under proposed § 1.664. Where an accredited auditor/certification body fails to comply with the requirements of proposed § 1.634(d)(1)(i) or (d)(1)(ii), we may withdraw the accreditation for cause under proposed § 1.664. Our decision to withdraw accreditation will be based on the circumstances associated with the auditor/certification body. Revocation of the recognition of its accrediting body does not, by itself, provide cause for withdrawal of the accreditation of an auditor/certification body that is in compliance with this rule. If evidence from a revocation proceeding reveals problems with the auditor/certification body, then we may pursue withdrawal of accreditation under proposed § 1.664 based on evidence associated with the auditor/certification body—not because of the revocation of recognition of its accrediting body.

Under proposed § 1.634(e), certifications issued by an auditor/certification accredited by an accreditation body whose recognition is subsequently revoked will remain in effect until the certifications terminate by expiration. We believe that eligible entities should not face adverse consequences solely because of the failure of an accreditation body selected by its auditor/certification body. However, we retain the authority, under section 801(q) of the FD&C Act, to refuse to accept a food certification, offered for admissibility purposes, if we reasonably believe the certification is not valid or reliable. Revocation of the recognition of its accrediting body does not, by itself, provide the basis for refusing a certification under section 801(q) of the FD&C Act. We will look to circumstances bearing on the issuance of a food certification to an eligible entity and submission by an accredited auditor/certification body in determining its validity or reliability. For example, if an investigation of fraud by an accreditation body also reveals evidence of fraud by the eligible entity or by the auditor/certification body, we may determine that the food certification is not valid or reliable.

Proposed § 1.634(f) explains that we will provide notice on our public Web site when we revoke the recognition of an accreditation body. We believe that public notice of matters such as revocation are necessary to help ensure the credibility of the program.

We solicit comment on our tentative conclusions regarding possible grounds for revocation, particularly revocation for cause. We seek examples that commenters believe do or do not represent good cause for revocation. We also solicit input on our proposal to use the informal hearing procedures set out in part 16 for challenges to a revocation decision.

f. *How do I voluntarily relinquish recognition? (Proposed § 1.635).* This proposed rule would offer an accreditation body a mechanism for voluntarily relinquishing its recognition before it terminates by expiration. Relinquishment on the initiative of the accreditation body is distinct from FDA revocation of recognition for good cause.

Proposed § 1.635 describes the procedures that an accreditation body must follow when it intends to relinquish its recognition. Current mammography regulations in 21 CFR 900.3 offer accreditation bodies the opportunity to voluntarily relinquish their authority to grant accreditation. We believe that accreditation bodies operating under our accredited third-party audits and certification program should likewise have the option to voluntarily relinquish their recognition. We are proposing certain procedural requirements—similar to those in the mammography regulations—that accreditation bodies must follow in relinquishing recognition. We believe these procedures are necessary to ensure an orderly transition for auditors/certification bodies accredited by an accreditation body that is relinquishing its recognition and for us to make necessary adjustments in the program, such as preparing to review self-assessments from any auditor/certification body accredited by such accreditation body. Proposed § 1.635(a) requires accreditation bodies to notify us at least 6 months before relinquishing recognition. The notifications must be submitted electronically and in English.

It is essential that we have the ability to maintain adequate oversight of the program, and particularly accredited auditors/certifications bodies that will no longer be under the oversight of a recognized accreditation body. Therefore, we are proposing to require an accreditation body relinquishing its recognition to identify the location where the records required by proposed § 1.625 will be maintained.

The decision to relinquish recognition is made solely by the accreditation body, without FDA involvement. Therefore, in relinquishing recognition under proposed § 1.635(a), the accreditation body would waive its rights to appeal, because there is no FDA action to serve as the basis for appeal.

Proposed § 1.635(b) requires the accreditation body to notify any third-party auditor/accreditation body, currently accredited, of the date on which it intends to relinquish recognition. An accredited auditor/certification body needs timely notice of its accreditation body's intent to relinquish recognition so that the auditor/certification body can begin to seek accreditation from another recognized accreditation body.

Proposed § 1.635(c) explains that an accreditation granted by a recognized accreditation body prior to relinquishing its recognition will remain in effect until it expires, except where we determine there is good cause for withdrawal under proposed § 1.664. In general, we believe an accredited auditor/certification body should not face adverse consequences from its accreditation body's decision to withdraw from our program and upon expiration of its accreditation would apply for accreditation from a different accreditation body under proposed § 1.660. If however we determine that there are grounds for us to withdraw the accreditation of the auditor/certification body, the auditor/certification body would have to seek reaccreditation under proposed § 1.666.

Proposed § 1.635(d) explains that an accreditation granted by an accreditation body that voluntarily relinquished recognition will not affect certifications issued by auditors/certification bodies accredited prior to its voluntary relinquishment, except that we may refuse to consider such certification in determining the admissibility of an article of food under section 801(q) of the FD&C Act if we determine the certification is not valid or reliable. Such certifications generally will remain in effect until they terminate by expiration. In considering the impact of relinquishment of recognition on certifications, we were mindful that eligible entities would not have input into the accreditation body's decision to relinquish recognition and that voluntary relinquishment likely would have no bearing on the performance of its accredited auditors/certification bodies and the validity or reliability of certifications they issue.

Proposed § 1.635(e) states that we will provide notice on our public Web site of the voluntary relinquishment of recognition by an accreditation body. To provide notice to program participants and to provide certainty to the markets, we also will post information on the status of accreditations and certifications as described under proposed § 1.635(c) and (d).

g. *How do I request reinstatement of recognition? (Proposed § 1.636).* This proposed rule describes the procedures that an accreditation body would have to follow when seeking reinstatement of its recognition. Under proposed § 1.636(a), an accreditation body that has had its recognition revoked may seek reinstatement by submitting a new application for recognition if it did not seek a regulatory hearing on the merits of the revocation of its recognition under proposed § 1.634 or if required to do so by a decision following a regulatory hearing. Proposed § 1.636(b) requires such application to be supported by evidence demonstrating that the grounds for revocation have been resolved and are unlikely to recur.

We believe that a new application would be an appropriate requirement for an accreditation body that had been previously shown not to be in compliance with the requirements of this rule, and any conditions we imposed on its recognition. We seek comment on this tentative conclusion and on the requirements we propose in § 1.636 for reinstatement of recognition.

5. Accreditation of Third-Party Auditors/Certification Bodies

This proposed rule would establish: (1) The eligibility requirements for an auditor/certification body to be authorized (''accredited'') by a recognized accreditation body or by FDA (''direct accreditation'') under the accredited third-party audits and certification program; (2) requirements for accredited auditors/certification bodies, including auditing, reporting, certification, and assessments; and (3) procedures FDA and third-party auditors/certification bodies will follow under the program.

TABLE 5—PROPOSED REQUIREMENTS FOR THIRD-PARTY AUDITORS/CERTIFICATION BODIES

Proposed rule section	Title
Accreditation of third-party auditors/certification bodies under this subpart	
1.640	Who is eligible to seek accreditation?
1.641	What legal authority must a third-party auditor/certification body have to qualify for accreditation?
1.642	What competency and capacity must a third-party auditor/certification body have to qualify for accreditation?
1.643	What protections against conflict of interest must a third-party auditor/certification body have to qualify for accreditation?
1.644	What quality assurance procedures must a third-party auditor/certification body have to qualify for accreditation?
1.645	What records procedures must a third-party auditor/certification body have to qualify for accreditation?
Requirements for accredited auditors/certification bodies under this subpart	
1.650	How must an accredited auditor/certification body ensure its audit agents are competent and objective?
1.651	How must an accredited auditor/certification body conduct a food safety audit of an eligible entity?
1.652	What must an accredited auditor/certification body include in food safety audit reports?
1.653	What must an accredited auditor/certification body do when issuing food or facility certification?
1.654	When must an accredited auditor/certification body monitor an eligible entity with food or facility certification?
1.655	How must an accredited auditor/certification body monitor its own performance?
1.656	What reports and notifications must an accredited auditor/certification body submit?
1.657	How must an accredited auditor/certification body protect against conflicts of interest?

TABLE 5—PROPOSED REQUIREMENTS FOR THIRD-PARTY AUDITORS/CERTIFICATION BODIES—Continued

Proposed rule section	Title
1.658	What records requirements must an accredited auditor/certification body meet?
Procedures for accreditation of third-party auditors/certification bodies under this subpart	
1.660	Where do I apply for accreditation or renewal of accreditation from a recognized accreditation body?
1.661	What is the duration of accreditation?
1.662	How will FDA monitor accredited auditors/certification bodies?
1.663	How do I request an FDA waiver or waiver extension for the 13-month limit for audit agents conducting regulatory audits?
1.664	When can FDA withdraw accreditation?
1.665	How do I voluntarily relinquish accreditation?
1.666	How do I request reaccreditation?
Additional procedures for direct accreditation of third-party auditors/certification bodies under this subpart	
1.670	How do I apply to FDA for direct accreditation or renewal of direct accreditation?
1.671	How will FDA review applications for direct accreditation and for renewal of direct accreditation?
1.672	What is the duration of direct accreditation?

Section 808 of the FD&C Act directs us to establish a voluntary program for accreditation of third-party auditors/certification bodies to conduct food safety audits and to issue certifications to eligible foreign entities. Sections 808(b)(2) and (c)(5)(C) of the FD&C Act require us to issue model accreditation standards to qualify third-party auditors/certification bodies as accredited auditors/certification bodies and to issue implementing regulations for the program.

The statute requires accredited auditors/certification bodies to: (1) Issue a written (and, as appropriate, electronic) food or facility certification after conducting a regulatory audit and such other activities necessary to determine compliance with the FD&C Act; (2) submit regulatory audit reports within 45 days; (3) complete reports of consultative audits within 45 days; (4) maintain onsite audit reports and other audit documents in its records; (5) immediately notify us of a condition that could cause or contribute to a serious risk to the public health; (6) prevent an audit agent from conducting a regulatory audit of an eligible entity for which the agent conducted a consultative or regulatory audit within the preceding 13 months, unless waived by FDA; and (7) comply with conflict of interest requirements.

a. *Who is eligible for accreditation? (Proposed § 1.640).* This proposed rule would establish the eligibility requirements for a third-party auditor/certification body to be qualified for accreditation by a recognized accreditation body or for direct accreditation by FDA. Under section 808(a)(3) of the FD&C Act, a third-party auditor can be a foreign government, an agency of a foreign government, a foreign cooperative, or any other third party, as FDA determines appropriate according to the Agency model accreditation standards. Section 808(c)(1)(A) of the FD&C Act requires a foreign government/agency seeking accreditation to demonstrate that its food safety programs, systems, and standards are capable of adequately ensuring that eligible entities or foods it certified meet applicable FDA requirements for food manufactured, processed, packed, or held for import into the United States. Section 808(c)(1)(B) of the FD&C Act requires a foreign cooperative or other third party seeking accreditation to demonstrate that each eligible entity it certified has systems and standards in use to ensure that the entity or food meets the applicable requirements of the FD&C Act. The statute requires us to issue model accreditation standards under section 808(b)(2) of the FD&C Act to qualify third-party auditors/certification bodies for accreditation.[30]

Proposed § 1.640(a) aligns with the definition of third-party auditor in section 808(a)(3) of the FD&C Act, describing the types of organizations that may be eligible for accreditation under our program: Foreign governments and agencies of foreign governments, foreign cooperatives, and other third parties. Proposed § 1.640(b) reflects the requirements of section 808(b) and (c)(1)(A) of the FD&C Act, stating that a foreign government or agency of a foreign government is eligible for accreditation if it meets the requirements of §§ 1.641 through 1.645, as specified in FDA model standards on qualifications for accreditation, including legal authority, competency, capacity, conflicts of interest, quality assurance, and records. We believe the scope of the review of a foreign government/agency's food safety programs, systems, and standards for accreditation purposes should focus on the program, systems, and standards relevant to the scope of accreditation sought. Under proposed § 1.640(c), a foreign cooperative or other third party is eligible for accreditation if it can demonstrate that the training and qualifications of its audit agents and its internal systems and standards meet the requirements of §§ 1.641 through 1.645, as explained in FDA model standards on qualifications for accreditation, including legal authority, competency, capacity, conflicts of interest, quality assurance, and records.

These proposed eligibility requirements build on the language in section 808 of the FD&C Act, using the approach we described in our 2009 guidance on voluntary certification for food and feed (Ref. 5), which contained recommendations relating to authority, competency, capacity, conflicts of interest, quality assurance, and recordkeeping. We also considered the FDA MFRPS (Ref. 12) and draft ICAT (Ref. 14) for similar standards that could help assure the maximum degree of consistency across domestic and international foods programs. Looking externally, we considered the GFSI Guidance version 6 (Ref. 23), which requires food safety scheme owners to use third-party auditors/certification bodies that comply with either ISO/IEC Guide 65:1996 (Ref. 20) for product

[30] Section 808(b)(2) of the FD&C Act directs us to include requirements for regulatory audit reports in the model accreditation standards. Because such reports are prepared by accredited third-party auditors/certification bodies, we have included requirements for regulatory audit reports in the proposed requirements for accredited auditors/certification bodies in this subpart.

certification or ISO/IEC 17021:2006 (revised in 2011) (Ref. 19) coupled with ISO TS 22003:2007 (Ref. 21) for management systems certification.

b. *What legal authority must a third-party auditor/certification body have to qualify for accreditation? (Proposed § 1.641).* This proposed rule would require third-party auditors/certification bodies seeking accreditation to demonstrate that they have sufficient legal authority, which may include authority established by contract, to adequately audit food facilities and to certify them for compliance with food safety requirements, once accredited.

Proposed § 1.641(a) would allow governmental bodies, with auditing and certification authority inherent in their roles as public officials, and private bodies, who have authority under contracts with food facilities, to qualify for accreditation if they have sufficient authority to conduct auditing and certification activities. This includes adequate authority to access records; conduct onsite audits; and to grant, suspend or withdraw certification. Clause 4.2(d) of ISO/IEC Guide 65:1996 (Ref. 20) requires auditors/certification bodies to be legal entities. Clause 5 of ISO/IEC 22003:2007 (Ref. 21), by cross reference to ISO/IEC 17021:2011 (Ref. 19), clause 5, requires auditors/certification bodies to be legal entities, or defined parts of a legal entity that can be held legally responsible for its certification activities. Clause 5.1.3 requires auditors/certification bodies to retain authority for their certification decisions, including granting, maintaining, renewing, extending, reducing, suspending, and withdrawing certification.

Proposed § 1.641(b) would require a third-party auditor/certification body to demonstrate that it has adequate legal authority to meet the requirements for an accredited auditor/certification body in proposed §§ 1.650 through 1.658, including conducting food safety audits using FDA requirements and industry standards and practices as audit criteria, preparing audit reports, issuing certifications, submitting reports and notification to us, implementing procedures to protect against conflicts of interest, maintaining records, conducting monitoring when necessary, and following the procedural requirements of our program.

Consistent with our procedures for recognition of accreditation bodies, we are not proposing to require a newly accredited auditor/certification body to wait a certain length of time before beginning to conduct foods safety audits and issue certifications under our program. Its certification authority goes into effect at the moment of accreditation. Therefore, we believe a third-party auditor seeking accreditation must demonstrate its capacity to fulfill the roles and responsibilities of an accredited auditor/certification body, if granted.

We seek comment on this tentative conclusion and our proposal to require third-party auditors/certification bodies to have demonstrable evidence to support a conclusion that they would be capable of meeting our requirements, if accredited. For comments opposing this requirement, we seek comment on what, if any, requirements we should put in place to ensure that a third-party auditor/certification body seeking accreditation would be equipped, upon accreditation, to perform the obligations required under the program.

c. *What competency and capacity must a third-party auditor/certification body have to qualify for accreditation? (Proposed § 1.642).* This proposed rule would require third-party auditors/certification bodies seeking accreditation to demonstrate adequate resources to fully implement their auditing and certification programs. Under proposed § 1.642(a), a third-party auditor/certification body must have adequate numbers of personnel and other agents with relevant knowledge, skills, and experience to effectively audit for compliance with applicable FDA requirements and industry standards and practices and to issue valid and reliable certifications. The third-party auditor/certification body would have to show it has adequate financial resources for its operations. In the model accreditation standards, we will explain the types of expertise and training we expect third-party auditors/certification bodies to demonstrate. We also will explain the types of documentation that might be used to demonstrate financial viability.

Standards associated with auditor competency are critical to international standards for certification bodies and are an area of focus for GFSI and other stakeholders. Audit agents and other personnel that lack the necessary knowledge, skills, and abilities will be unable to perform credible audits and may result in flawed certification decisions. ISO/IEC 17021:2011 (Ref. 19), clauses 7.2.1 and 7.2.2, requires certification bodies to have personnel with sufficient competence to manage their audit and certification work and to employ, or have access to, sufficient numbers of auditors and technical experts to cover the volume and types of its activities.

Under proposed § 1.642(b), a third-party auditor/certification body seeking to qualify for recognition must demonstrate that it has the competency and capacity to adequately audit eligible foreign entities to determine if they are in compliance with applicable FDA requirements and, for consultative audits, industry standards and practices. It also must be capable of making certification decisions that are valid and reliable, submitting reports and notifications to FDA in the manner we propose, and following the procedural requirements of our program. As previously explained, a third-party auditor/certification body will be authorized to begin auditing and certification under our program immediately upon accreditation. Therefore, it needs to sufficiently demonstrate its ability to meet the competency and capacity requirements of an accredited auditor/certification body in its application for accreditation.

d. *What protections against conflicts of interest must a third-party auditor/certification body have to qualify for accreditation? (Proposed § 1.643).* This proposed rule would require third-party auditors/certification bodies to have established programs to safeguard against conflicts of interest that might compromise their objectivity and independence from food facilities they audit and certify. Proposed § 1.643(a) would require accreditation bodies seeking recognition to have written measures to safeguard against financial conflicts of interest between the third-party auditor/certification body (and its officers, personnel, and other agents) and food facilities (and owners and operators). Without these conflict of interest requirements, we believe it would be difficult for a third-party auditor/certification body to demonstrate it has adequate independence, as a third party, in auditing and certifying food facilities. The model accreditation standards will describe appropriate measures to protect against conflicts of interest.

ISO/IEC 17021: 2011 (Ref. 19), clause 4.2.2, recognizes that payment for certification services can be a potential threat to impartiality. Clause 5.2.2 requires auditors/certification bodies to identify, analyze, and document the possibilities for conflicts of interest and how it eliminates or minimizes such threats.

Under proposed § 1.643(b), a third-party auditor/certification body seeking accreditation must demonstrate its capability to meet the conflict of interest requirements that would apply under § 1.657, upon accreditation. This measure is necessary to help ensure that any auditing and certification activities conducted after accreditation would be

considered objective and independent under our program.

e. *What quality assurance procedures must a third-party auditor/certification body have to qualify for accreditation? (Proposed § 1.644).* This proposed rule would require third-party auditors/certification bodies seeking accreditation to have quality assurance procedures in place. Proposed § 1.614(a) requires a third-party auditor/certification body seeking accreditation to have a written program for monitoring and assessing the performance of its officers, personnel, and other agents. The program must include procedures for identifying areas for improvement and quickly executing corrective actions. The model accreditation standards will describe types of quality assurance measures that may be used to qualify for accreditation.

We considered both international and domestic standards in developing proposed § 1.644. ISO/IEC Guide 65: 1996 (Ref. 20), clause 4.7.1, requires auditors/certification bodies to conduct periodic internal audits to verify that their quality systems are implemented and effective, to take timely and appropriate corrective actions, and to document results. The MFPRS (Ref. 12), which apply domestically, also include requirements for quality assurance/internal audit programs that involve assessment, corrective action, and continuous improvement.

Proposed § 1.644(b) requires the third-party auditor/certification body to demonstrate it has the capability to meet the quality assurance requirements of § 1.655, for performing annual self-assessments against our requirements and reporting the results of such self-assessments.

f. *What records procedures must a third-party auditor/certification body have to qualify for accreditation? (Proposed § 1.645).* This proposed rule would require third-party auditors/certification bodies seeking accreditation to have written records procedures in place. Under proposed § 1.645(a), a third-party auditor/certification body would have to demonstrate that it has written procedures for establishing, controlling, and retaining records on its auditing and certification program and activities. While we are not proposing that a third-party auditor/certification body must have retained records for a specified period of time prior to its accreditation, we believe it is necessary for a third-party auditor/certification body to have maintained records for such length of time to allow for its program and performance to be adequately assessed in determining whether it is qualified for accreditation. The third-party auditor/certification body also must maintain records as required by its existing legal obligations. The model accreditation standards will explain these recordkeeping, document control, and retention requirements.

In developing proposed § 1.645(a), we considered the records requirements in ISO/IEC 17021:2011 (Ref. 19), clause 9.9.1, which requires auditors/certification bodies to maintain records on audits and other certification activities for all clients, including all organizations submitting applications and all organizations audited, certified, or with suspended or withdrawn certifications. Clause 9.9.4 requires auditors/certification bodies to have documented records policies and procedures for retaining records for the current cycle and an additional certification cycle, noting that records may need to be retained for a longer period, where required by law.

Proposed § 1.645(b) would require a third-party auditor/certification body seeking accreditation to demonstrate its capability to meet the requirements of an accredited auditor/certification body, if accredited. This would include, for example, capacity for maintaining records for 4 years, which is the maximum length for which accreditation could be granted. It also requires accredited auditors/certification bodies to give us routine access to records of regulatory audits and, for consultative audits, access to records in specific circumstances. We realize that existing third-party auditors/certification bodies might need to modify the confidentiality provisions in their standard contracts with food facilities. Third-party auditors/certification bodies applying for accreditation under this voluntary program must demonstrate their capacity to grant us access to relevant records, upon accreditation, because records are necessary to ensure the rigor, credibility, and independence of the accredited third-party audits and certification program.

6. Requirements for Accredited Auditors/Certification Bodies

TABLE 6—PROPOSED REQUIREMENTS FOR THIRD-PARTY AUDITORS/CERTIFICATION BODIES ACCREDITED BY RECOGNIZED ACCREDITATION BODIES OR BY FDA

Proposed rule section	Title
1.650	How must an accredited auditor/certification body ensure its audit agents are competent and objective?
1.651	How must an accredited auditor/certification body conduct a food safety audit of an eligible entity?
1.652	What must an accredited auditor/certification body include in food safety audit reports?
1.653	What must an accredited auditor/certification body do when issuing food or facility certifications?
1.654	When must an accredited auditor/certification body monitor an eligible entity with food or facility certification?
1.655	How must an accredited auditor/certification body monitor its own performance?
1.656	What reports and notifications must an accredited auditor/certification body submit?
1.657	How must an accredited auditor/certification body protect against conflicts of interest?
1.658	What records requirements must an accredited auditor/certification body meet?

a. *How must an accredited auditor/certification body ensure its audit agents are competent and objective? (Proposed § 1.650).* This proposed rule would require an accredited auditor/certification body to ensure that any audit agents it uses are competent and objective. (Where an accredited auditor/certification body is an individual, the determination of whether such auditor/certification body is competent and objective will be made as part of the accreditation decision.)

Proposed § 1.650(a)(1) and (a)(2) require an accredited auditor/certification body to use audit agents that have knowledge and experience to conduct food safety audits within the scope of its accreditation. We believe that competency and independence cannot be demonstrated solely by records or by an interview. We have tentatively concluded that a determination of competency must be based in part on observations of the audit agent conducting food safety audits that use the requirements of the

FD&C Act as the standard against which eligible entities are audited.

We recognize that many audit agents currently are being assessed for their performance in conducting audits under private food safety schemes. However, section 808(a)(7) of the FD&C Act clearly states that regulatory audits performed under this system must assess firms for compliance with the FD&C Act and the results of such audits are to be used to determine whether certification may be issued. Even consultative audits for internal purposes must include assessments of compliance with the FD&C Act, although they also include audits on industry standards and practices. For these reasons, we are proposing to require that audit agents be qualified through observation of audits assessing compliance with the FD&C Act.

ISO/IEC Guide 65:1996 (Ref. 20), clauses 5.1.1 and 5.2.1, require auditors/certification bodies to establish minimum criteria for competence to ensure that personnel are competent for the functions they perform and that auditors'/certification bodies' evaluations and certifications are carried out effectively and uniformly. ISO/IEC 17021:2011 (Ref. 19), clause 7.1.3, requires auditors/certification bodies to have documented processes for initial competency evaluations and ongoing monitoring of personnel performance and competency. Clauses 7.2.11 and 7.2.12 state that the documented monitoring procedures for auditors/certification bodies must include onsite observation at a frequency based on need determined from all monitoring information available (e.g., review of audit reports and client feedback).

Proposed § 1.650(a)(3) requires audit agents to participate in annual food safety training. ISO/IEC 17021:2011 (Ref. 19), clause 7.2.8, requires auditors/certification bodies to identify training needs and to offer or provide access to specific training to ensure competency of its auditors, technical experts, and personnel. The FDA MFRPS (Ref. 12), Standard Two, requires each State inspector to receive 36 contact hours of classroom training and participate in at least two joint or audit inspections with a qualified trainer, every 3 years.

Proposed § 1.650(a)(4) requires the accredited auditor/certification body to ensure that its audit agents have no conflicts of interest with the eligible entity to be audited and is in compliance with the conflicts of interest requirements of § 1.657. Section 808(c)(5)(B) of the FD&C Act prohibits audit agents from owning or operating an eligible entity to be audited by such agent. Accredited certification bodies also are required to have procedures to ensure against using any of its officers or employees that has a financial conflict of interest regarding an eligible entity to be certified by the certification body under section 808(c)(5)(A) of the FD&C Act. We believe that proposed paragraph (a)(4) is an appropriate way to implement these requirements.

The language in proposed § 1.650(a)(4) also is consistent with existing international standards, including ISO/IEC Guide 65:1996 (Ref. 20), clause 5.2.2, which requires personnel to agree to comply with the auditor's/certification body's conflict of interest rules and to declare any prior or present association with a supplier or designer of products they are to be assigned to audit or certify. ISO/IEC 17021:2011 (Ref. 19), clause 5.2.12, states that certification body personnel who could influence certification activities must act impartially and must not allow commercial, financial, or other pressures to compromise impartiality.

Proposed § 1.650(a)(5) requires audit agents to agree to notify their certification bodies immediately upon discovering, during a food safety audit, any condition that could cause or contribute to a serious risk to the public health, cross-referencing proposed § 1.656(c), which requires the accredited auditor/certification body to immediately notify FDA of such condition. Proposed § 1.650(a)(5) reflects the language of section 808(c)(4)(A) and (c)(4)(B) of the FD&C Act, which require notification based on conditions found during an audit and identifies ''audits'' as both consultative and regulatory audits. To ensure that roles and responsibilities of the audit agent and accredited auditor/certification body are clearly delineated, proposed § 1.650(a)(3) places the audit agent under an obligation to report to its auditor/certification body immediately upon discovering a notifiable condition. (Having been informed by its agent, the accredited auditor/certification body must immediately notify FDA, under proposed § 1.656(c).)

ISO/IEC Guide 65: 1996 (Ref. 20), clause 5.2.2, requires auditor/certification body personnel to sign a contract or other commitment by which they agree to comply with the certification body rules, which often include confidentiality requirements. The legal obligation to alert FDA, as a regulator, of a notifiable condition is a new requirement. Voluntary notification is not a common practice of third-party auditors/certification bodies. We believe the statutory notification requirement is of such importance to our program that an individual serving as an audit agent should agree to notify its accredited auditor/certification body upon finding any condition meeting the notification criteria of section 808(c)(4)(A) of the FD&C Act. We believe this will help ensure that audit agents and accredited auditors/certification bodies are aware of the notification requirements for food safety audits conducted under the FDA program.

Proposed § 1.650(b) contains additional requirements that the accredited auditor/certification body must meet before assigning any individual acting as its audit agent to conduct an audit of a particular eligible entity. This requirement is intended to ensure that each food safety audit assigned to an audit agent is conducted by a qualified audit agent. Put another way, in order to meet proposed § 1.650(b), an accredited third-party certification body would have to ensure not only that a food safety audit is within the scope of its accreditation but also that the audit is within the scope of qualifications of any audit agent the certification body assigns to conduct it.

Clauses 7.1.1 and 7.1.2 of ISO/IEC 17021: 2011 (Ref. 19) require auditors/certification bodies to ensure that their personnel have appropriate relevant knowledge and set competence criteria of required knowledge and skills necessary to effectively perform audit and certification tasks to achieve the intended results. Clause 7.2.7 requires the auditor/certification body to use auditors and technical experts only for those certification activities (including audits) where they have demonstrated competence. Similarly, ISO/IEC Guide 65:1996 (Ref. 20), clause 5.1.1, requires auditors'/certification bodies' personnel to be competent for the functions they perform.

Proposed § 1.650(c) imposes additional statutory restrictions on audit agents conducting regulatory audits. Under section 808(c)(4)(C) of the FD&C Act, an audit agent may not conduct a regulatory audit of an eligible entity if such agent conducted a consultative or regulatory audit for the same eligible entity in the preceding 13 months (except that such limitation may be waived under proposed § 1.663 if the accredited auditor/certification body demonstrates there is insufficient access to accredited certification bodies in the country or region where the eligible entity is located.)

We seek comment on the requirements we propose to ensure that audit agents as competent and objective and on any other requirements necessary to achieve this objective. In

particular, we seek input on whether we should place other requirements or limitations to help ensure auditor competency. Any recommendations that are based on common industry standards or practices should be so identified.

b. *How must an accredited auditor/certification body conduct a food safety audit of an eligible entity? (Proposed § 1.651).* This proposed rule would establish requirements for the conduct of consultative and regulatory audits by accredited auditors/certification bodies. Proposed § 1.651 implements section 808(c)(3) of the FD&C Act regarding audit reports and sets out requirements we believe are necessary for planning and conducting audits in a manner that fulfills the purposes of section 808 of the FD&C Act, including ensuring that audits are of sufficient rigor to allow us to rely on the certifications that issue based on the results of such audits.

Proposed § 1.651(a) requires accredited auditors/certification bodies to obtain basic information from the eligible entity about the type and nature of the requested audit, which will allow the accredited auditor/certification body to determine whether: (1) The requested audit is within the scope of its accreditation and which of its audit agents would be qualified to conduct the audit; (2) whether any conflicts of interest prevent it from conducting an audit; or (3) whether any other limitations apply, such as the 13-month limit described in proposed § 1.650(c). ISO/IEC Guide 65:1996 (Ref. 20), clause 8.2.1, is similar, requiring auditors/certification bodies to ensure that their clients complete a signed application that describes the scope of the desired certification and to provide information on the products to be certified, the certification system, and the certification standards, if known. The information we propose to require under § 1.651(a) is essential for ensuring that the accredited auditor/certification body (and any audit agent assigned) has the appropriate qualifications to conduct the food safety audit.

Proposed § 1.651(a) also requires the auditor/certification body to obtain the eligible entity's operating schedule for a 30-day window, including information relevant to the scope and purposes of the audit. This information will help accredited auditors/certification bodies in meeting the requirements of section 808(c)(5)(C)(i) of the FD&C Act for ''unannounced'' food safety audits. Having the facility's operating schedule for a certain period of time will allow the auditor/certification body to determine when to appear at the facility to conduct a food safety audit under proposed § 1.651(b). ISO/IEC 17021:2011 (Ref. 19) has several provisions on audit planning, such as clause 9.1.2.1, which requires them to establish an audit plan for each audit. The requirement to provide a production schedule to enable audit planning also is a feature of the British Retail Consortium's Global Standard for Food Safety (BRC scheme) (Ref. 32). In advance of an audit, a facility subject to audit under the BRC scheme (Ref. 32) may be asked to provide, among other things, a production schedule and typical shift pattern to allow planning to cover relevant processes.[31]

Proposed § 1.651(b) would require accredited auditors/certification bodies to develop contracts or other arrangements granting them adequate authority to conduct unannounced audits, access records and any area in the facility relevant to the scope of the audit, use an accredited laboratory for analytical results, notify FDA of a condition that could cause or contribute to a serious risk to the public health, prepare and submit audit reports, as appropriate, and allow FDA to observe any food safety audit it conducts. This provision is intended to help ensure that the auditor/certification body has such access to areas within the facility and records maintained by the eligible entity as is necessary to conduct a rigorous food safety audit. Proposed § 1.651(b) also ensures that that auditor/certification body has authority to use a laboratory accredited under section 422 of the FD&C Act to perform analytical work, and authority to provide any reports and the notifications that must be submitted to us under this subpart.

Under clause 8.6.1(d)(2) of ISO/IEC 17021:2011 (Ref. 19), auditors/certification bodies must require prospective clients to make all necessary arrangements for the conduct of the audits, including for examining records and access to all processes, areas, records, and personnel. An application for certification must include a statement that the applicant agrees to supply any information needed for evaluation of the products to be certified, under clause 8.2.1(b) of ISO/IEC Guide 65:1996 (Ref. 20).

Proposed § 1.651(c) addresses the protocols for food safety audits under this rule. The audit must be conducted in a manner consistent with the identified scope and purpose of the audit, on an unannounced basis as required by section 808(c)(5)(C)(i) of the FD&C Act, and must be sufficiently rigorous to give confidence in the reliability and validity of the audit outcomes.

ISO/IEC 17021:2011 (Ref. 19), clause 9.1.9.5.1, requires that information relevant to the audit objectives, scope, and criteria be collected by appropriate sampling and verified to become audit evidence. Information may be collected through observation, records review, and interviews. Under clause 9.1.9.6, audit findings, summarizing conformity and detailing nonconformity and its supporting audit evidence must be recorded and reported to enable an informed certification decision.

Proposed § 1.651(c) requires the facility audit portion of the food safety audit to be conducted at an appropriate time within the 30 days covered by the operating schedule provided by the eligible entity under proposed § 1.651(a)(1)(ii).

Though most private food safety audit standards rely on announced audits, the BRC scheme (Ref. 32) has protocols for both announced and unannounced audits.[32] An unannounced audit under the BRC scheme may be conducted in 2 parts, with the ''Good Manufacturing Practices-type audit'' unannounced and occurring prior to a records review, which may be a planned visit.

We considered several factors in developing the audit protocols in proposed § 1.651(c), including the 2-part BRC unannounced audit protocol. We have tentatively concluded that it is reasonable and appropriate to interpret the ''unannounced audit'' requirement of section 808(c)(5)(C)(i) of the FD&C Act to apply to the onsite facility assessment portion of a food safety audit. We have further concluded that an accredited auditor/certification body, equipped with a 30-day facility operating schedule, would have adequate opportunity to plan and conduct an unannounced facility audit. We anticipate that an eligible entity seeking a food safety audit would sign a contract with an accredited auditor/certification body at eligible entity (e.g., its headquarters), where some or all of the relevant records of the entity would be maintained. We think it is appropriate and efficient to allow an auditor/certification body to review records maintained at the eligible entity on the same day that the contract is signed, even though the signing of the contract is a planned event.

[31] Section III, Part I, Clause 7.2 states that a certification body may request ''production schedules, to allow audits to cover relevant processes, for example night-time manufacture or where production processes are not carried out each day'' and ''typical shift patterns.''

[32] The BRC scheme (Ref. 32) only allows facilities that have achieved sufficiently high scores on announced audits to be audited under the unannounced protocol.

We propose to sequence our audit protocol different than that of the BRC, in that we would allow the planned records review to occur prior to the unannounced onsite facility audit. We believe it will be important for accredited auditors/certification bodies to gather information about the facility before going onsite to audit it. (Unannounced audits under the BRC scheme occur only after an announced audit has been conducted, which allows the auditors/certification bodies to become familiar with the facility and its records before conducting an unannounced audit.) Accredited auditors/certification bodies operating under the FDA program would have a limited opportunity, if any, to gain knowledge about a facility prior to conducting an unannounced audit. For this reason, we believe that accredited auditors/certification bodies under the FDA program should sequence the unannounced audit differently than the 2-part BRC unannounced audit. We propose to require accredited auditors/certification bodies to first review an eligible entity's management systems (e.g., records) before conducting an onsite food safety audit at the facility.

We believe that the requirement for unannounced audits will help provide confidence in our program. It helps ensure that food facilities will remain ''audit ready.'' It also reinforces the independence of the accredited auditor/certification body.

We seek comment on our proposed approach for ''unannounced'' audits, including whether it is feasible and appropriate. We also request information on current industry practice on arranging audits—e.g., does industry commonly provide an auditor/certification body information about its operating schedule? If not, what other means are used to ensure that the auditor/certification body visits a facility at the appropriate time to conduct the requested activities? For comments suggesting other approaches, we request information on the practical implications of the recommended alternate approach(es).

c. *What must an accredited auditor/certification body include in food safety audit reports? (Proposed § 1.652).* This proposed rule would implement the audit reporting requirements of section 808 of the FD&C Act and describes the elements of consultative and regulatory audit reports that we believe would be appropriate.

As required by section 808(c)(3) of the FD&C Act, proposed § 1.652(a) requires a report of a consultative audit be prepared not later than 45 days after the audit was completed. Proposed § 1.652(a) also sets requirements for the content of reports of consultative audits, based on the content required by section 808(c)(3)(A)(i) through (c)(3)(A)(iv) of the FD&C Act: (1) The identity of the persons at the eligible entity responsible for compliance with food safety requirements; (2) the dates and scope of the audit; and (3) any other information we require that relates to or may influence an assessment of compliance with the FD&C Act.

ISO/IEC 17021:2011 (Ref. 19), clause 9.1.10.2, requires audit reports to provide an accurate, concise, and clear record of the audit to allow for informed certification decisions and include or refer to the name and address of the client, the type of audit, the audit scope, the dates and places where audit activities were conducted, audit findings, evidence, and conclusions, consistent with the requirements of the type of audit, and any unresolved issues, if defined.

Under proposed § 1.652(a)(1) and (a)(2), we propose to require that the following identifying information for the facility and the eligible entity (if it differs from the facility) that chooses to participate in the voluntary third-party certification program be included in the consultative audit report: Name, address, and a unique facility identifier (UFI), as required by FDA.

We are proposing to require this information to help ensure that we have comprehensive, accurate, and up-to-date on eligible entities and audited facilities that chose to participate in the program, which will allow us to conduct efficient and effective oversight of the program. Firm name and address alone may not provide sufficient information to allow us to correctly identify an eligible foreign entity, such as a farm that is not subject to the FDA facility registration requirements and that may be located in a remote area in the foreign country. An UFI could help us with eligible entities and facilities that would otherwise be difficult to identify or locate.

After considering the types of information available, we have tentatively concluded that an UFI should include two elements: (1) A common business identifier, and (2) information on the firm's geographic location. For the business identifier, we believe the Data Universal Numbering System (D–U–N–S®) numbers system is appropriate because it is a commonly used international business entity listing system under which a company can obtain, at no charge, a unique identification number for its business. D–U–N–S® numbers are distinct, site-specific, 9-digit numbers that would allow us to identify and verify certain business information, e.g., its trade names, the name of each corporate officer and director, and additional ownership information that may be useful in determining possible conflicts of interest between eligible entities and accredited auditors/certification bodies.[33] The use of D–U–N–S® numbers, as a unique numerical identification system, is less prone to mistake or ambiguity than the use of an eligible entity's or facility's name and address. Similarly, geographic information, such as Global Positioning System (GPS) coordinates, would identify precisely where a facility or eligible entity (if different) is located. We believe this is a necessary element of a UFI, particularly for facilities such as farms that are not required to register with us under §§ 1.225 through 1.243 and that may be difficult to locate by street address. We expect that accredited auditors/certification bodies that are qualified to participate in our program likely would already own GPS units or would be adequately resourced to purchase them.

Proposed § 1.652(a)(3) and (a)(4) requires reports of consultative audits to include the contact information for the person(s) responsible for food safety compliance, the dates and scope of the consultative audit, both of which are statutory requirements.

Proposed § 1.652(a)(5) requires information on any deficiencies observed during the audit that require corrective action and the date on which such corrective actions were completed. ISO/IEC 17021:2011 (Ref. 19), clause 9.1.11, states that [audit/]certification bodies must require their clients to analyze the cause of nonconformities and the corrective actions to address such nonconformities within a defined time. [Auditors/]certification bodies must verify and document the effectiveness of the corrective actions based on document review or, where necessary, onsite verification or additional audits under clauses 9.1.12 and 9.1.13. Proposed § 1.652(a)(5) would require such documentation be included in the consultative audit report.

Proposed § 1.652(b) requires an accredited auditor/certification body to prepare a report of a regulatory audit and submit it to us electronically, in English, within 45 days after conducting such audit, as mandated by section 808(c)(3) of the FD&C Act. We have

[33] D–U–N–S® numbers are assigned by Dun & Bradstreet and maintained in their database of D–U–N–S® numbers. If the D–U–N–S® Number for a location has not been assigned, a business may obtain one for no cost directly from Dun & Bradstreet (*http://www.dnb.com*).

tentatively concluded that electronic submission of regulatory audit reports, written in English, will help ensure we have ready access to information needed for monitoring and oversight of the program. Proposed § 1.652(b) also requires auditors/certification bodies accredited by recognized accreditation bodies to submit each regulatory audit report to the accrediting body in the same timeframe and manner as it is submitted to us. We believe that this information is important to recognized accreditation bodies in conducting monitoring and oversight of the auditors/certification bodies they accredit, including monitoring required by proposed § 1.621, and in assessing its own performance of accreditation activities under proposed § 1.622.

The report of a regulatory audit must contain all of the data elements required for reports of consultative audits under proposed § 1.652(a). Proposed § 1.652(b) requires that regulatory audit reports contain the following additional data elements: (1) The FDA registration number assigned to the facility, where applicable; (2) the process(es), food(s), and facility observed during the audit; and (3) information on sampling and laboratory analysis, recent food recalls, recent significant changes at the facility, and any food or facility certifications recently issued to the entity. We discuss each of these additional data elements.

FDA Registration Number: Having an audited facility's FDA registration number, where required, will allow us to verify (and to correct, where necessary) registration information in our database. This will help us in overseeing this program and in risk-based planning for FDA foreign inspections.

Process(es) and food(s) observed during a regulatory audit: In proposed § 1.652(b)(4) we require a description of the process(es) and food(s) observed during the audit, because we believe that, otherwise, the description of the scope of the audit may not provide sufficient information to allow the accredited auditor/certification body, its recognized accreditation body, or us to determine whether the certification matches the scope of the audit stated and, furthermore, whether the stated scope of the audit matches the scope of auditor's/certification body's accreditation. In sum, the description of the process(es) and food(s) subject to regulatory audit help to verify the validity of any food or facility certifications issued as a result of the regulatory audit.

Sampling and analysis: Proposed § 1.652(b)(8) requires information on whether the entity uses sampling and laboratory analysis (e.g., under a microbiological sampling plan) as part of the facility's preventive control plan. We are not proposing to require the accredited auditor/certification body to include the results of such sampling and analysis in the regulatory audit report. Information on whether a facility uses sampling and laboratory analysis helps identify how the facility has chosen to verify its preventive controls.

Recalls during the preceding 2 years: Proposed § 1.652(b)(9) requires information on whether the entity issued a food-safety related recall of an article of food from the facility during the 2 years preceding the audit and, if so, any such article(s) recalled and the reason(s) for the recall(s). We believe this is an important element of a regulatory audit for certification purposes, because it may be relevant in helping us to determine whether to accept a certification or other assurance by an accredited auditor/certification body for purposes of admitting a food into the United States under section 801(q) of the FD&C Act. Recent food safety-related recalls might call into question the reliability of any food certifications issued to the facility. Recall information also may be relevant to the risk factors used to determine VQIP eligibility.

Recent significant changes: Proposed § 1.652(b)(10) requires submission of information regarding whether, during the 2 years preceding the audit, the entity made a significant change in the activities conducted at the facility, if such change creates a reasonable potential for a new hazard or a significant increase in a previously identified hazard. For example, a new hazard might arise if a facility began to process a different type of commodity or began to package an existing product in a different way (e.g., going from a canned product to a vacuum-packed ready-to-eat product).

We developed this criterion based on the language in section 418(i) of the FD&C Act, regarding conditions that trigger a requirement to reanalyze hazards under section 418(b) of the FD&C Act (21 U.S.C. 350g(b) and (i)), as described in the Preventive Controls proposed rule. While the types of facilities that may be audited are not limited to facilities subject to the proposed preventive controls regulations, we nonetheless believe the language set out in the statute sets the appropriate boundaries for proposed § 1.652(b)(9). We have tentatively concluded that the type of information that has relevance for reanalysis of hazards in a facility under the Preventive Controls proposed rule is the same type of information that has relevance for the conduct of a regulatory audit of a facility under this rule. We invite comment on this tentative conclusion. For comments that oppose this criterion, we seek comment on whether any other information on facility changes has relevance for our oversight and, if so, we seek alternative language for proposed § 1.652(b)(9).

Prior certifications: Proposed § 1.652(b)(11) requires regulatory audit reports to contain information on any food or facility certifications issued to the entity during the 2 years preceding the audit, where available. The information must include the scope and duration of each such certification. This information is a helpful in verifying certifications submitted to us by importers for purposes of VQIP eligibility or as required to accompany food for which certification is a condition of admission under section 801(q) of the FD&C Act. It also verifies the activities of an accredited auditor/certification body under this program, which should be documented in the records of the accredited auditor/certification body under proposed § 1.658.

Proposed § 1.652(c) explains that an accredited auditor/certification body must submit a report, as required by paragraph (b), for each regulatory audit it conducts, regardless of whether certification issued as a result. This requirement is consistent with section 808(c)(3)(A) of the FD&C Act, which requires all regulatory audit reports to be submitted. That statutory provision is not limited to reports of regulatory audits where certifications were issued.

Proposed § 1.652(d) requires accredited certification bodies to implement written procedures for receiving and addressing challenges from eligible entities contesting adverse regulatory audit results and requires them to maintain records of such challenges under § 1.658. ISO/IEC 17021:2011 (Ref. 19) requires auditors/certification bodies to have a documented process to receive, evaluate, and make decisions on complaints relating to certification activities under clause 9.8.4., as well as a documented process for handling appeals under clause 9.7.1.

d. *What must accredited auditor/certification body do when issuing food or facility certifications? (Proposed § 1.653).* This proposed rule describes the activities that an accredited auditor/certification body would have to perform when issuing food and facility certifications. It is based on the language in section 808(c)(2)(C) (requiring a regulatory audit and such other

necessary activities) and (c)(5)(C)(i) (requiring unannounced audits) of the FD&C Act.

Proposed § 1.653(a) specifies that the certification body must have conducted a regulatory audit meeting the requirements of proposed § 1.651, including verification of corrective actions and using an accredited laboratory, subject to the requirements of the laboratory accreditation program we implement under that provision (21 U.S.C. 350k).

ISO/IEC 17021:2011 (Ref. 19) requires auditors/certification bodies to use certain information in considering certification decisions: Audit reports; comments on nonconformities and corrective actions (if any); verified application information; and the audit agent's recommendation on certification, including any conditions or observations. The auditor's/certification body's decision must be based on an evaluation of the audit findings and conclusions and any other relevant information, such as public information and the client's comments on the audit report.

Proposed § 1.653(b) sets out the requirements for issuance of certification. As with other submissions under this rule, we propose to require certifications to be submitted electronically and in English. Proposed paragraph (b)(2) describes the minimum elements of a certification: Identifying information for the accredited auditor/certification body, the eligible entity to which certification was issued (including its unique facility identifier), and the facility (if different from the eligible entity); the scope and date(s) of the regulatory audit and the name of the audit agent conducting it, where applicable; and the scope of the certification, its date of issuance, and its date of expiration. These are the minimum elements we believe necessary for us to link the certification to an importer in the VQIP program under section 806 of the FD&C Act or to a food subject to mandatory certification under section 801(q) of the FD&C Act. Moreover, these data elements will help us determine whether the certification is valid and reliable or should be refused under section 801(q)(4)(B) of the FD&C Act.

e. *When must an accredited auditor/certification body monitor an eligible entity with food or facility certification? (Proposed § 1.654).* This proposed rule would require accredited auditors/certification bodies to monitor eligible entities in certain circumstances. Under proposed § 1.654, an accredited auditor/certification body is required to conduct monitoring of an eligible entity if the auditor/certification body has reason to believe that an eligible entity to which it issued a certification may no longer be in compliance with the FD&C Act.

In developing proposed § 1.654, we considered international standards. ISO/IEC Guide 65: 1996 (Ref. 20), clause 13.1, requires auditors/certification bodies to have documented procedures for surveillance under applicable criteria. Under clause 13.2, auditors/certification bodies must determine whether changes, such as a client's intended changes in manufacturing processes, require further investigation. ISO/IEC 17021:2011 (Ref. 19), clause 9.3, requires auditors/certification bodies to develop their surveillance activities so that representative areas and functions are regularly monitored. Surveillance may include onsite audits. While we are not proposing to require regular surveillance of certified eligible entities, we believe requiring an accredited auditor/certification body to conduct monitoring when it has ''reason to believe'' that the entity is no longer in compliance with the FD&C Act strikes an appropriate balance.

Proposed § 1.654 requires the accredited auditor/certification body to immediately notify us under proposed § 1.656(d) if it determines that the entity to which it issued certification is out of compliance with the FD&C Act. We believe that such notification is necessary to ensure the protection of the public health and to maintain the credibility of the program, particularly in light of the use of such certifications: To allow admission of a food subject to mandatory certification based on a determination of safety risk, under section 801(q) of the FD&C Act, and to allow importers to participate in a program giving them expedited review and entry of product from a certified facility, under section 806 of the FD&C Act.

f. *How must an accredited auditor/certification body monitor its own performance? (Proposed § 1.655).* This proposed rule would require accredited auditors/certification bodies to conduct self-assessments annually and following revocation of the recognition of its accreditation body. Proposed § 1.655(a) requires an accredited auditor/certification body prepare a report of the results of each self-assessment. The report must address the performance of its officers, employees, or other agents in activities under this subpart. For audit agents in particular, the accredited auditor/certification body must report on whether its audit agents, during food safety audits, focused on the elements of production, manufacturing, processing, packing, and holding of food that pose the most significant risks to human and/or animal health.

Under proposed § 1.655(a), the self-assessment report must evaluate the degree of consistency among its officers, employees, or other agents in performing activities under this subpart. (With audit agents, this is frequently called ''auditor correlation.'') In addition, the report must assess compliance with the conflict of interest requirements of § 1.657, actions taken based on assessments by FDA or its recognized accreditation body, and must address any other aspects of performance relevant to a determination of compliance, if requested by FDA.

Proposed § 1.655(b) states that, in conducting its self-assessment, an accredited auditor/certification body may assess the compliance of one or more of the eligible entities it certified, as a means to evaluate its performance. Under proposed § 1.655(c), the auditor/certification body must quickly execute appropriate corrective actions when problems are identified during a self-assessment under paragraphs (a) or (b) and must maintain records documenting the completion of such actions under proposed § 1.658. In addition, proposed § 1.655(d) describes the contents of the written reports of its self-assessments, including describing any corrective actions taken based on its self-assessments and stating the extent of its compliance with conflict of interest requirements and other applicable requirements of this rule.

ISO/IEC Guide 65:1996 (Ref. 20), clause 4.7.1, requires auditors/certification bodies to conduct periodic internal audits covering all of its procedures and to ensure that personnel responsible for the area audited are informed of the audit outcome, timely and appropriate corrective actions are taken, and audit results are documented. Additionally, clause 4.7.2 requires the management with executive responsibility to review its quality systems at sufficiently short intervals to ensure its continuing suitability and effectiveness.

The FDA MFRPS (Ref. 12) have elements requiring States to conduct periodic self-assessments of its manufactured food regulatory program against the criteria we established. These self-assessments are designed to identify the strengths and weaknesses of the State program by determining the level of conformance with the program standards and are independently verified through an audit. Records documenting the results of the self-assessment must be maintained. We have tentatively concluded that self-assessments would serve a similarly

important role for accredited auditors/certification bodies under our accredited third-party audits and certification program.

g. *What reports and notifications must an accredited auditor/certification body submit? (Proposed § 1.656).* This proposed rule would establish requirements for various reports and notifications that accredited auditors/certification bodies would have to submit to FDA. Proposed § 1.656(a) requires accredited auditors/certification bodies to submit regulatory audit reports no later than 45 days after completing such audit. This requirement is based on section 808(c)(3)(A) of the FD&C Act, which requires submission of regulatory audit reports as a condition of accreditation. The regulatory audit report must be submitted electronically, in English, contain the information required by proposed § 1.652(b). The requirement for electronic submissions, in English language, is required consistently throughout this rule, for the reasons explained in section IV.3.c and IV.3.d.

Under proposed § 1.656(b), an accredited auditor/certification body must submit its annual self-assessment report to its accreditation body (or, in the case of direct accreditation, to us) no later than 45 days after the anniversary date of its accreditation under this program and, for reports required following revocation of its accreditation body's recognition, within 2 months of the revocation. The self-assessment report, which is required by § 1.655, must be submitted electronically, in English, and must include an up-to-date list of any audit agents the certification body uses to conduct audits under this subpart. As explained in the discussion of proposed § 1.621, we believe that the results of such assessments will be helpful to us in performing our monitoring of not only the accredited auditor/certification body itself, but also the recognized accreditation body that accredited it, where applicable. Monitoring of recognized accreditation bodies and accredited third-party auditors/certification bodies is required by section 808(f)(2) of the FD&C Act.

Having information about deficiencies the accredited auditor/certification body identified in its own performance and program, together with the corrective actions that were implemented to address such deficiencies helps us target our monitoring activities. Moreover, the results of self-assessments across a number of accredited auditors/certification bodies will help us identify trends in program performance and may offer an early signal of potential issues for the Agency to address at the program level.

Proposed § 1.656(c) requires an accredited auditor/certification body to immediately notify us when any audit agent or the auditor/certification body itself, discovers during an audit any condition that could cause or contribute to a serious risk to the public health. This notification is required by section 808(c)(4) of the FD&C Act, which identifies certain information that must be contained in the notification.

Based on that requirement and the authority granted to us to issue regulations for the efficient enforcement of its authority, under section 701(a) of the FD&C Act, proposed § 1.656(c) requires such notification to include the following: (1) The name and address of the facility where the condition was discovered; (2) the FDA registration number assigned to the facility, where applicable; (3) the name and address of the eligible entity, if different from that of the facility; and (4) the condition that could cause or contribute to a serious risk to the public health and for which notification is required.

Information on the identity of the entity and the notifiable condition is required by section 808(c)(4) of the FD&C Act. The other data elements we propose to require are essential for us to take immediate and necessary steps to protect the public health. In the event that the facility where the condition was discovered is different than the eligible entity, or is at a different location, we need to know the name and address of the facility so that we can interact directly with the facility. Knowing the facility's FDA registration number (where required) helps us quickly assemble relevant information we possess, including information from our foreign regulatory partners. The data elements required for notification under § 1.656(c)(1), (c)(2), and (c)(3) offer the minimum information we believe necessary to allow the Agency to determine the appropriate course of action with respect to the situation.

We note that section 808 of the FD&C Act does not define ''serious risk to the public health,'' nor does it give examples of ''condition[s] that could cause or contribute to a serious risk to the public health.'' The statutory description of notifiable conditions—as ones that ''could'' cause or contribute to a serious risk to public health—suggests to us that the scope of this provision is broad. In developing these proposed implementing regulations, we looked for the precise phrase, ''cause or contribute to a serious risk to the public health'' elsewhere in the FD&C Act, but did not find it there (21 U.S.C. 301 *et seq.*). In considering section 808 of the FD&C Act as a whole, we noted that the provision giving us access to records associated with consultative audits cross-references section 414 of the FD&C Act (21 U.S.C. 350c). Section 414 of the FD&C Act, among other things, gives us access to records if we have a reasonable belief that an article of food, and any other article of food that we reasonably believe is likely to be affected in a similar manner, is adulterated and presents a threat of serious adverse health consequences or death to humans or animals (SAHCODHA) (21 U.S.C. 350c(a)). Although Congress chose to incorporate SAHCODHA by referencing section 414 of the FD&C Act as authority for us to access records of consultative audits under section 808(c)(3)(C) of the FD&C Act, Congress did not use the SAHCODHA standard in describing the types of conditions that could cause or contribute to a serious risk to the public health and that must be reported to FDA under section 808(c)(4)(A) of the FD&C Act. We believe Congress intended the standard for notification to be a different standard than SAHCODHA.

We invite comment from interested parties interpreting the notification standard in section 808(c)(4)(A) of the FD&C Act and providing examples of circumstances that stakeholders believe do and do not rise to the level of a ''condition that could cause or contribute to a serious risk to the public health.'' We are particularly interested in receiving input on whether our existing Class I and Class II recall standards (Ref. 33), taken together, might adequately address any condition covered by section 808(c)(4)(A) of the FD&C Act. An FDA Class I recall occurs in a situation in which there is a reasonable probability that the use of or exposure to a violative product will cause serious adverse health consequences or death. An FDA Class II recall occurs in a situation in which use of or exposure to a violative product may cause temporary or medically reversible adverse health consequences or where the probability of serious adverse health consequences is remote.

We also note that international standards for [auditors/]certification bodies have exceptions to confidentiality agreements where disclosure is required by law. For example, ISO/IEC Guide 17021:2011 (Ref. 19), clause 8.5.3, requires an auditor/certification body that is required by law to release confidential information to a third party, to notify the client before providing such information to a third party, ''unless regulated by law.'' Based on section 808(c)(4)(A) of the FD&C Act, which

requires that the accredited third-party certification body ''immediately'' notify us, proposed § 1.656(c) requires an accredited auditor/certification body to notify us of a serious risk to public health prior to notifying its client, the eligible entity. We recommend that accredited auditors/certification bodies include a provision explaining this notification requirement in their contracts with eligible entities. We believe this will help ensure that eligible entities are aware of the notification requirement and will help emphasize to the accredited auditors/certification bodies their obligation to notify FDA of such condition.

Proposed § 1.656(d) requires an accredited auditor/certification body to immediately notify us electronically, in English, upon withdrawing or suspending the food or facility certification of an eligible entity. The notice must describe the basis for withdrawal or suspension. We believe immediate notification of suspension or withdrawal of certifications is necessary because of how we use these certifications: As a condition of granting admission to a food subject to an risk determination under section 801(q) of the FD&C Act and as a criteria for an importer's eligibility to participate in VQIP under section 806 of the FD&C Act. We realize that certification bodies currently withdraw and suspend certifications for a number of reasons, some of which relate to payment of fees and others relate to food safety matters. Therefore, having information on the fact that a certification has been withdrawn or suspended, as well as the reason(s) for the action, allows us to determine the effect of suspension or withdrawal on our use of the certifications under sections 801(a) and 806 of the FD&C Act. Depending on the reasons for suspension or withdrawal of certification, we may conduct an inspection or take other action.

Under proposed § 1.656(e)(1), an accredited auditor/certification body that notifies us under proposed § 1.656(c) must immediately thereafter notify the eligible entity where the condition was discovered. Proposed § 1.656(e)(2) requires an accredited auditor/certification body to notify its accreditation body (or, in the case of direct accreditation, to us) electronically, in English, within 30 days after making any significant change that may affect its compliance with the requirements of §§ 1.640 through 1.658. The notice must describe the purpose of the change and an explanation for whether and how the change might affect its accreditation under this program. In that proposed § 1.640 requires auditors/certification bodies to maintain compliance with the requirements of this rule as a condition of their accreditation, this notification is necessary for our program oversight. We will use this information in monitoring the certification body as required by section 808(f)(2) of the FD&C Act and may use the notification (or the failure to notify under proposed § 1.656(e)(2)) in determining whether to withdraw accreditation under section 808(c)(6) of the FD&C Act.

h. *How must an accredited auditor/certification body protect against conflicts of interest? (Proposed § 1.657).* This proposed rule would require accredited auditors/certification bodies to have procedures to ensure against financial conflicts of interest and to make annual financial disclosure statements available to us, as required by section 808(c)(5)(A) and (c)(5)(B) of the FD&C Act. Additionally, section 808(c)(5)(C) of the FD&C Act directs us to issue implementing regulations including requirements for unannounced audits, a structure to decrease the potential for conflicts of interest (including requirements for timing and public disclosure of fee payments), and appropriate limits on financial affiliations between certification bodies (and their audit agents) and eligible entities to be certified.

Proposed § 1.657 sets out the elements of a conflict of interest program we believe are appropriate to implement this mandate and to ensure the objectivity and independence of accredited auditors/certification bodies necessary for to maintain the credibility of the program. Proposed § 1.657(a) requires the accredited auditor/certification body to have written program that covers the certification body itself and any of its officers, employees, or other agents (e.g., audit agents) conducting audits or certification activities under this program.

Based in large part on section 808(c)(5)(A)(i) of the FD&C Act, proposed § 1.657(a)(1) prohibits an accredited auditor/certification body and its officers, personnel, and other agents (except for audit agents subject to paragraph (a)(2)) from owning, controlling, managing, or otherwise having a financial interest in an eligible entity, or an affiliate, parent, or subsidiary of such entity, to be certified by the auditor/certification body . The effect of the language in proposed § 1.657(a)(1) would be to prevent a foreign food firm with its own audit team from conducting regulatory audits and issuing certifications for its own facilities, processes, or products (i.e., first-party audits) or for an affiliate or for its parent or subsidiary (i.e., second-party audits). Given the multinational nature and multiple corporate interests of many food companies, we have tentatively concluded it is important to extend the conflict of interest safeguards in proposed § 1.657 to subsidiaries, affiliates, and parent organizations. We seek comment on this tentative conclusion.

Proposed § 1.657(a)(2) prohibits an audit agent of an accredited auditor/certification body from conducting a food safety audit of an eligible entity, or an affiliate, parent, or subsidiary of such entity, that the agent owns or operates. This provision is largely based on the section 808(c)(5)(B)(i) of the FD&C Act, which prohibits an audit agent from owning or operating an eligible entity to be audited by the agent, coupled with language covering financial interests associated with an affiliate, parent, or subsidiary of the eligible entity, for the reasons previously described.

To be clear, proposed § 1.657(a)(2) does not go so far as to prohibit audit agents from having any financial interest in any food company; rather, it prevents an audit agent from conducting a consultative or regulatory audit of an eligible entity or an affiliate, parent, or subsidiary of such entity, owned or operated by such agent. We believe that requiring any audit agent conducting audits under this program to divest all interests in FDA-regulated food firms might unnecessarily limit the pool of qualified audit agents.

We seek comment on these tentative conclusions and on the approach we propose in § 1.657(a)(2), including whether this approach might unnecessarily limit the availability of competent audit agents to conduct audits under this program and whether removing the restriction relating to interests in affiliates, parents, or subsidiaries might create, or create the appearance of, bias.

Proposed § 1.657(a)(3) prohibits officers, employees, or other agents of an accredited auditor/certification body from accepting any gift, gratuity, or item of value from the entity subject to audit. A gift, gratuity, or item of value would not include meals of a de minimis value provided on the premises where the audit or assessment is being conducted, recognizing that some facilities may be remotely located and allowing onsite meals is appropriate in the interest of efficiency. We seek comment on whether to interpret de minimis value according to the limits for gifts or items of value applicable to U.S. Government employees. Proposed § 1.657(a)(3) also

allows for authorized officials, employees, or agents to accept payments of fees for the audit and certification, as described in proposed § 1.657(b).

Proposed § 1.657(b) addresses the requirement, in section 808(c)(5)(C) of the FD&C Act, to issue implementing regulations that include a structure to decrease the potential for conflicts of interest, including timing and public disclosure, for fees paid by eligible entities to accredited third-party certification bodies. After considering this statutory provision, we have tentatively concluded that an appropriate structure to decrease the potential for conflicts of interests between an eligible entity and an accredited auditor/certification body would be one in which there was public disclosure of the point at which the entity paid fees for audit and certification services. Proposed § 1.657(b) provides that that payment of such fees does not constitute a covered financial conflict of interest.

Proposed § 1.657(c) imputes to an officer, employee, or other agent of an accredited auditor/certification body the financial interests of his or her spouse and minor children, if any. This proposed requirement is based on the approach we recommended in the 2009 Guidance that no auditor acting for the [auditor/]certification body (or spouse or minor children) should have any significant ownership or other financial interest regarding any product of the type it certifies (Ref. 5). As another example, FDA regulations on conflicts of interest of experts serving on panels for unapproved new animal drugs imputes the financial interests and arrangements of an expert's spouse and minor children to the expert him- or herself (21 CFR 516.141(g)).

We believe that imposing a similar requirement on the immediate family of the officers, employees, or other agents of an accredited auditor/certification body will help to ensure the credibility of the accredited third-party audits and certification program at every level. We seek comment on this tentative conclusion.

Proposed § 1.657(d) requires accredited certification bodies to maintain on their Web sites an up-to-date list of eligible entities to which they issued certifications under this subpart, the duration and scope of each such certifications, and the date on which the eligible entity paid any fee or reimbursement under proposed § 1.657(c). Information on timing of fee payments is required by section 808(b)(5)(C)(iii) of the FD&C Act and is necessary, we believe, in the interest of transparency.

We seek comment on the tentative conclusions identified here—namely, we should require accredited certification bodies to: (1) Have a written program to safeguard against conflicts of interest; (2) include the interest of any affiliate, parent, or subsidiary of a certification body within the scope of interests covered by its conflict of interest program; (3) impute the interests of immediate family members of an officer, employee, or other agent to such officer, employee, or other agent; and (4) to maintain on its Web site a list of its certified eligible entities, including duration and scope of each such certification, and disclosure of the date(s) on which an eligible entity paid the accredited auditor/certification body any fee or reimbursement associated with an audit or certification under this program.

i. *What records requirements must an accredited auditor/certification body meet? (Proposed § 1.658).* This proposed rule would establish requirements for accredited auditors/certification bodies to establish, control, and retain records relating to their auditing and certification activities under our program.

Proposed § 1.658 requires accredited auditors/certification bodies to maintain certain documents and data electronically, in English, for 4 years, to document compliance with this rule.[34] These records include: (1) Requests for regulatory audits; (2) audit reports and other documents resulting from a consultative or regulatory audit; (3) any notification of a condition under proposed § 1.650(a)(5) or by the accredited auditor/certification body to FDA under proposed§ 1.656(c); (4) any food or facility certification issued under this program; (5) any challenge to an adverse regulatory audit decision and its disposition; (6) any monitoring it conducted of a certified eligible entity; (7) the auditor's/certification body's self-assessments and corrective actions; and (8) any significant change to the auditing and certification program that might affect compliance with this rule.

Maintenance of records on requests for regulatory audits under proposed § 1.658(a)(1) is one means to verify the adequacy of audit planning under proposed § 1.651(a). Records associated with audits, certifications, challenges to auditor/certification body decisions, internal reviews, significant changes, and monitoring (also known as surveillance) of eligible entities are among the records commonly required to be maintained by international standards. We believe it appropriate to require maintenance of similar records for purposes of this rule.

We propose to require accredited auditors/certification bodies choosing to participate in this program to maintain their program records in English. We believe this English-language records requirement is necessary for our oversight based on, among other things, our experience with the shrimp pilot (Ref. 6). During the pilot project, we faced costly delays and logistical hurdles in attempting to assess third-party [auditors/]certification bodies, because we needed English-language translations of their records to be able to conduct performance audits. Based on that experience, we believe that having real-time access to English-language records is necessary for conducting efficient and effective assessments to the fullest extent of our authority.

We solicit comment on the English-language records requirement in proposed § 1.658 and on whether other approaches might be similarly efficient and effective. For example, should we allow an accredited auditor/certification body to maintain its records in a language other than English, if the auditor/certification body would be required to make an English translation of its records available ''promptly'' upon a written FDA request? What should ''promptly'' mean in this context (e.g., 2 business days of the written request)? Would such an approach be as efficient and effective as the proposed English-language records requirement would be? For comments offering other approaches, we request a detailed description of the alternative, an analysis of the impacts of the alternative on our ability to ensure the compliance of accredited auditors/certification bodies with applicable FDA requirements.

Based on section 808(c)(3)(B) of the FD&C Act, proposed § 1.658(b) and (c) require an accredited auditor/certification body to provide FDA access to records upon request of an officer or employee we designate, except that reports or other documents of a consultative audit must be made available to us only in accordance with the requirements of subpart J (records access under section 414 of the FD&C Act). Proposed § 1.658(b) reflects section 808(c)(3)(C) of the FD&C Act, which

[34] We are proposing records be maintained for 4 years, which aligns with the maximum length of time for which accreditation may be granted. This will be particularly useful in decisionmaking on an application to renew accreditation, because the accrediting body will have access to data and information on activities conducted at any time during its current accreditation. We used a similar rationale in proposing to require recognized accreditation bodies to maintain their records for 5 years, which is the maximum length of time for which recognition may be granted.

states that reports or other documents resulting from a consultative audit are accessible to us only under circumstances that meet the threshold for records access under section 414 of the FD&C Act (21 U.S.C. 350c). Based on these statutory requirements, we can access such documents from consultative audits in either of the following circumstances: If we have a reasonable belief that an article of food, and any other article of food that we reasonably believe is likely to be affected in a similar manner, is adulterated and presents a threat of SAHCODHA; or if we believe that there is a reasonable probability that the use of or exposure to an article of food, and any other article of food that we reasonably believe is likely to be affected in a similar manner, will cause SAHCODHA, as described in § 1.361 of this part.

We have tentatively concluded that the records identified and the records maintenance and access requirements in proposed § 1.658 are necessary to monitor and evaluate accredited certification bodies, as directed by section 808(f)(2) of the FD&C Act. We believe it is reasonable to require accredited auditors/certification bodies to maintain such records for the maximum length of accreditation, 4 years. We acknowledge that the requirements of proposed § 1.658 may require revisions to contracts and perhaps other documents establishing and limiting the scope of an auditor's/certification body's authority with respect to granting records access. We nonetheless have tentatively concluded that such access is necessary to help ensure the credibility of the program. We seek comment on this tentative conclusion and on the specific records requirements we propose.

7. Procedures for Accreditation of Third-Party Auditors/Certification Bodies

TABLE 7—PROPOSED PROCEDURES FOR THIRD-PARTY AUDITORS/CERTIFICATION BODIES

Proposed rule section	Title
1.660	Where do I apply for accreditation or renewal of accreditation by a recognized accreditation body?
1.661	What is the duration of accreditation?
1.662	How will FDA monitor accredited auditors/certification bodies?
1.663	How do I request an FDA waiver or waiver extension for the 13-month limit for audit agents conducting regulatory audits?
1.664	When can FDA withdraw accreditation?
1.665	How do I voluntarily relinquish accreditation?
1.666	How do I request reaccreditation?

a. *Where do I apply to obtain accreditation from a recognized accreditation body? (Proposed § 1.660).* This proposed rule explains where interested third-party auditors/certification bodies could apply for accreditation under our accredited third-party audits and certification program.

Proposed § 1.660 informs third-party auditors/certification bodies that they must apply directly to a recognized accreditation body for accreditation, except for those circumstances meeting the requirements of proposed § 1.670 for direct accreditation.

b. *What is the duration of accreditation? (Proposed § 1.661).* Proposed § 1.661 states that accreditation of a third-party auditor/certification body may be granted for a period up to 4 years. This applies both to accreditations granted by recognized accreditation bodies and to direct accreditations that we grant under proposed § 1.672. We have tentatively concluded that 4 years is an appropriate duration for an accreditation, because we believe the rigor and credibility of this new program rests, in part, on the extent of oversight of accredited third-party auditors/certification bodies to conduct audits and to certify eligible foreign entities.

The process for renewal of accreditation provides an opportunity for recognized accreditation bodies (and us, for directly accredited auditors/certification bodies) to look closely at all aspects of the auditor's/certification body's program and performance and to decide anew whether the auditor/certification body meets the eligibility requirements.

We note proposed § 1.661 set the duration of accreditation in the new accredited third-party auditor/certification body program for a shorter period than the duration of accreditation we allow in the mammography program under 21 CFR part 900, which is a time-tested program. As we and the recognized accreditation bodies participating in the accredited third-party audits and certification program for food gain experience with the program, we may revisit this matter. For these reasons, we have tentatively concluded that accreditation should be granted for a period of no longer than 4 years. We seek comment on this tentative conclusion.

c. *How will FDA monitor accredited auditors/certification bodies? (Proposed § 1.662).* This proposed rule would establish requirements for our evaluation of the performance of accredited auditors/certification bodies, based on section 808(f)(2) of the FD&C Act, which requires us to monitor accredited auditors/certification bodies periodically, or at least once every 4 years.

The statute makes no distinction between the frequency of our monitoring necessary for auditors/certification bodies accredited by recognized accreditation bodies and for auditors/certification bodies that we directly accredit. However, we are proposing, in § 1.621, to require a recognized accreditation body to conduct annual assessments of the performance of each third-party auditor/certification body it accredited under this program. Under proposed § 1.662(a) we will perform our own performance evaluations of auditors/certification bodies accredited by recognized accreditation bodies at least once every 3 years for auditors/certifications bodies accredited for 4 year terms, and at the mid-term point for auditors/certification bodies accredited for less than 4 years. Proposed § 1.662(a) also establishes requirements for our monitoring of directly accredited auditors/certification bodies. In these circumstances, we act in the role of a recognized accreditation body and will perform annual monitoring. Not only would annual monitoring by us provide oversight similar to the annual monitoring requirements of proposed § 1.621, but also it would satisfy the monitoring requirement of section 808(f)(2) of the FD&C Act with respect to monitoring of directly accredited auditors/certification bodies.

Proposed § 1.662(b) identifies the types of information we may review in conducting our evaluations of accredited auditors/certification bodies. Proposed § 1.662(c) makes clear that we can conduct our evaluation of an auditor/certification body through onsite observations of performance during the conduct of food safety audits and through document review.

For both directly accredited auditors/certification bodies and those accredited by recognized accreditation bodies, we will evaluate performance based on whether the auditor/certification body continues to comply with the requirements of §§ 1.640 through 1.658 and whether there are performance deficiencies that would warrant withdrawal of accreditation under this rule. We seek comment on whether the criteria in proposed § 1.662(a) and (b) are appropriate for evaluating accredited auditors/certification bodies under this program. Additionally, we seek recommendations for possible approaches we might use to monitor performance, such as conducting our inspections of a certain number of eligible entities, shortly after the accredited auditor/certification body conducted a food safety audit of an eligible entity. For each such recommendation, we seek comment on the how the approach might affect: (1) The incentives for auditors/certification bodies to seek accreditation under our program, and (2) the degree of oversight needed to meet the objectives of section 808 of the FD&C Act.

d. *How do I request a waiver or waiver extension for the 13-month limit for audit agents conducting regulatory audits? (Proposed § 1.663).* This proposed rule would allow accredited auditors/certification bodies to seek an FDA waiver of the limit on audit agents conducting regulatory audits of an eligible entity where they conducted a regulatory or consultative audit in the preceding 13 months. Under section 808(c)(4)(C)(ii) of the FD&C Act, we may waive the limit, which appears in proposed § 1.650(c), where there is insufficient access to accredited certification bodies in the country or region where an eligible entity is located. Proposed § 1.663(a) establishes the requirements for a waiver or waiver extension and proposed § 1.663(b) to (f) describes the procedural requirements for a waiver or waiver extension request, including electronic submission, in English. Under proposed § 1.663(g), we explain that an accredited auditor/certification body should not use an audit agent subject to the 13-month limit in proposed § 1.650 unless we have granted the request or the 13-month limit has elapsed. The procedural requirements in proposed § 1.663 mirror the procedural requirements for other applications submitted to us.

e. *When can FDA withdraw accreditation? (Proposed § 1.664).* This proposed rule would establish the conditions under which we could withdraw accreditation from an auditor/certification body, regardless of whether it was directly accredited or accredited by a recognized accreditation body.

Proposed § 1.664(a) describes criteria for mandatory withdrawal that reflect section 808(c)(6)(A) of the FD&C Act, which requires us to withdraw accreditation in certain outbreak situations, whenever we find that an accredited auditor/certification body is no longer meeting the requirements for accreditation, or following a refusal to allow U.S. officials to conduct audits and investigations to ensure compliance with these requirements. The statute directs us to withdraw accreditation if a food or facility certified by an accredited auditor/certification body under our program is linked to an outbreak of foodborne illness that has a reasonable probability of causing serious adverse health consequences or death in human or animals, except under section 808(c)(6)(C) of the FD&C Act, if we conduct an investigation of the material facts of the outbreak, review the steps and actions taken by the auditor/certification body, and determine that the accredited auditor/certification body satisfied the requirements for issuance of certification under this rule. The exception is set out in proposed § 1.664(b).

Section 808(c)(6)(B) of the FD&C Act allows us to withdraw accreditation from an accredited auditor/certification body whose accrediting body had its recognition revoked, if we determine there is good cause for withdrawal. This statutory provision is reflected in § 1.664(c), which also provides two examples of circumstances we believe provide good cause for withdrawal, including bias or lack of objectivity and performance calling into question the validity or reliability of its food safety audits and certifications.

In proposed § 1.664(d) we provide for records access when considering possible withdrawal of accreditation. In proposed § 1.664(e) we provide for notice of withdrawal of accreditation and describe the processes to challenge such withdrawal.

Proposed § 1.665(f) describes the effect of withdrawal on eligible entities. In general, a food or facility certification issued by an accredited auditor/certification prior to withdrawal of accreditation will remain in effect until it terminates by expiration, except if we have reason to believe a certification issued for purposes of section 801(q) of the FD&C Act is not valid or reliable, we can refuse to accept the certification.

Proposed § 1.664(g)(1) explains that FDA will notify the recognized accreditation body that accredited the third-party auditor/certification body whose accreditation was withdrawn by FDA. In such circumstances, proposed § 1.664(g)(1) requires the recognized accreditation body to conduct a self-assessment, as described in § 1.622, and report the results of such self-assessment to FDA within 2 months after withdrawal, as required by § 1.623(b). Proposed § 1.664(g)(2) explains that FDA may revoke recognition of an accreditation body whenever FDA determines there is good cause for revocation under proposed § 1.634.

Proposed § 1.664(h) provides for public notice of withdrawal of accreditation on FDA's Web site. We believe this information is necessary in the interest of transparency.

f. *How do I voluntarily relinquish accreditation? (Proposed § 1.665).* This proposed rule would allow accredited auditors/certification bodies to voluntarily relinquish their accreditations before they expire and without having them withdrawn by FDA.

Proposed § 1.665 offers the mechanism for voluntarily relinquishment before it terminates by expiration. Relinquishment on the initiative of the auditor/certification body is distinct from withdrawal of accreditation for cause.

The mammography regulations in 21 CFR 900.3 offer accreditation bodies the opportunity to voluntarily relinquish their authority to grant accreditation. We believe that auditors/certification bodies operating under our accredited third-party audits and certification program should have the option to voluntarily relinquish their accreditation for their business reasons. We are proposing certain procedural requirements—similar to those contained in the mammography regulations—which auditors/certification bodies must follow in relinquishing accreditation. We believe these measures are necessary to ensure an orderly transition for eligible entities certified by the auditor/certification body that is relinquishing its accreditation, and for us to make the necessary adjustments in the program.

Proposed § 1.665(a) requires auditors/certification bodies to notify us and to

notify their accreditation body (where applicable) at least 6 months before relinquishing accreditation. We propose to require such notifications to be submitted electronically and in English. To ensure that we have the ability to maintain adequate oversight of the program, including through access the records of the auditor/certification body, the notice required under proposed § 1.665(a) must identify the location where the records required by proposed § 1.658 will be maintained.

The decision to relinquish accreditation is made solely by the third-party auditor/certification body, without FDA involvement. Therefore, in relinquishing accreditation under proposed § 1.665(a), the auditor/certification body would waive its rights to appeal, because there is no FDA action to serve as the basis for appeal.

Proposed § 1.665(b) requires the accreditation body to notify any eligible entity to which it issued a food or facility certification no later than 15 business days after notifying FDA of its intent to voluntarily relinquish accreditation.

Proposed § 1.665(c) describes the effects of relinquishment of accreditation on certification issued by an auditor/certification body prior to relinquishing its accreditation. In considering the impact of relinquishment on eligible entities, we were mindful that such entities would likely have little, if any, opportunity to provide input on a decision by its auditor/certification body whether or not to relinquish accreditation. We believe that, under most circumstances, the fact that an auditor/certification body decided to relinquish its accreditation is likely to have no bearing on the validity or reliability of certifications it issued. Therefore, we have tentatively concluded that the certification of an eligible entity whose auditor/certification body voluntarily relinquished its accreditation under proposed § 1.665 will remain in effect (subject to recertification under proposed § 1.681), except that we may refuse to consider a certification issued for purposes of section 801(q) of the FD&C Act, if we have reason to believe the certification is not valid or reliable.

Proposed § 1.665(d) provides for public notice on our Web site of the voluntary relinquishment of accreditation by an auditor/certification body.

g. *How do I request reaccreditation? (Proposed § 1.666).* This proposed rule would allow a third-party auditor/certification body to become reaccredited after withdrawal or relinquishment of its accreditation.

Section 808(c)(7) of the FD&C Act requires us to establish procedures to reinstate the accreditation of an auditor/certification body for which we have withdrawn accreditation. Under proposed § 1.666(a), we will reinstate accreditation if the auditor/certification body can demonstrate that the grounds for withdrawal no longer exist, or if the withdrawal was prompted by the revocation of recognition of its accreditation body and the auditor/certification body finds a new recognized accreditation body, becomes directly accredited, or otherwise meets conditions we impose in the withdrawal. Under proposed § 1.666(b), an auditor/certification body that voluntarily relinquished its accreditation may become reaccredited by submitting a new application for accreditation under proposed § 1.660 or § 1.670 (where the criteria for direct accreditation are met).

8. Additional Procedures for Direct Accreditation of a Third-Party Auditors/Certification Bodies

TABLE 8—ADDITIONAL PROCEDURES PROPOSED FOR DIRECT ACCREDITATION OF THIRD-PARTY AUDITORS/CERTIFICATION BODIES

Proposed rule section	Title
1.670	How do I apply to FDA for direct accreditation or renewal of direct accreditation?
1.671	How will FDA review applications for direct accreditation and for renewal of direct accreditation?
1.672	What is the duration of direct accreditation?

a. *How do I apply to FDA for direct accreditation or renewal of direct accreditation? (Proposed § 1.670).* This proposed rule describes the circumstances and procedures that would apply for direct accreditation and renewal of direct accreditation.

Proposed § 1.670 describes the conditions under which we will accept applications for direct accreditation, reflecting the statutory language in section 808(b)(1)(A)(ii) of the FD&C Act, which allows us to directly accredit auditors/certification bodies if we have not identified and recognized an accreditation body to meet the requirements of section 808 of the FD&C Act within 2 years after establishing our program. Proposed § 1.670(a)(1) identifies certain circumstances and criteria that we have tentatively concluded are relevant for determining whether we have not identified and recognized an accreditation body to meet the requirements of section 808 of the FD&C Act. Proposed § 1.670(a)(2) specifies conditions under which we may revoke or modify such a determination. Proposed § 1.670(a)(3) provides for public notice of such determination or its revocation or revision.

Proposed § 1.670(b) sets out the procedures for applying for direct accreditation or renewal of direct accreditation. This mirrors the procedures for applications established elsewhere under this rule.

b. *How will FDA review applications for direct accreditation and for renewal of direct accreditation? (Proposed § 1.671).* This proposed rule would establish procedures for processing applications for direct accreditation and for renewal of direct accreditation.

Proposed § 1.671 describes a process for reviewing and deciding on applications for direct accreditation and renewal that is consistent with the procedures for reviewing and deciding on applications under other provisions in this rule. For example, we propose to establish a queue for direct accreditation and renewal applications based on the date on which an application was completed, and we will review applications on a first in, first out basis. We will inform applicants of deficiencies in application documentation. To encourage applicants to supply any missing information promptly, we will not place an application in the queue until it is complete. Allowing incomplete applications in the queue might block applications that are ready for review, but were submitted later in time.

We will inform an applicant once its application has been placed in the queue. We will review each application for direct accreditation or renewal of direct accreditation to determine

whether the applicant meets the eligibility requirements of proposed § 1.640. We will communicate anticipated processing periods to applicants. We are not proposing to include specific timeframes for review in the regulation, for the following reasons: (1) It is difficult to project, at this time, the amount of resources that will be available to us for this program, which under section 808(c)(8) of the FD&C Act, is funded through user fees established by regulation; and (2) we anticipate that, as we gain experience in reviewing applications and in overall administration of the program, we will become more efficient in processing applications but currently lack data that would allow us to reasonably estimate the effect of efficiency gains on review times.

Under proposed § 1.671(c), (d), and (e), we will notify an applicant, in writing, whether the application has been approved or denied. If approved, the notice will describe any conditions imposed on the direct accreditation. If denied, the notice will state the basis for the denial and will describe procedures for requesting reconsideration of the decision. We believe this provision offers necessary protections for applicants. We seek comment on the process and procedures required by proposed § 1.671.

c. *What is the duration of direct accreditation? (Proposed § 1.672).* This proposed rule would establish the duration of accreditation.

Proposed § 1.672 states that direct accreditation of a third-party auditor/certification body may be granted for a period up to 4 years. Similarly, proposed § 1.661 allows a recognized accreditation body to grant accreditation for a period of up to 4 years. We have tentatively concluded that 4 years is an appropriate duration for an accreditation—whether granted by a recognized accreditation body or by us—because we believe the rigor and credibility of this new program rests, in part, on the extent of oversight of accredited third-party auditors/certification bodies to conduct audits and to certify eligible foreign entities. The process for renewal of accreditation provides an opportunity for us to look closely at all aspects of the auditor's/certification body's program and performance and to decide anew whether the auditor/certification body meets the eligibility requirements for accreditation.

We are proposing to set the duration of accreditation under this new program for a shorter period than the duration of accreditation we allow under 21 CFR part 900, which is the mammography program established several years ago. As we gain experience with accredited auditors/certification bodies in the food and feed programs, we may revisit this matter. For these reasons, we have tentatively concluded that accreditation should be granted for a period of no longer than 4 years. We seek comment on this tentative conclusion.

9. Requirements for Eligible Entities

TABLE 9—PROPOSED REQUIREMENTS FOR ELIGIBLE ENTITIES

Proposed rule section	Title
1.680	How and when will FDA monitor eligible entities?
1.681	How frequently must eligible entities be recertified?

a. *How and when will FDA monitor eligible entities? (Proposed § 1.680).* This proposed rule would provide for FDA monitoring of eligible entities that choose to be audited under our program.

Proposed § 1.680(a) states that we may conduct an onsite audit of an eligible entity that has received certification under this program, as allowed under section 808(f)(3) of the FD&C Act, which specifies that we may conduct an onsite audit of a certified entity at any time, with or without the accredited auditor/certification body present. Proposed § 1.680(b) reflects section 808(h)(1) of the FD&C Act, explaining that a food safety audit conducted under this program is not considered an inspection under section 704 of the FD&C Act.

b. *How frequently must eligible entities be recertified? (Proposed § 1.681).* This proposed rule would require eligible entities to be recertified annually.

Section 808(d) of the FD&C Act requires eligible entities to apply for annual certification for food required to have certification under section 801(q) of the FD&C Act or for its facility, if it intends the certification to be used by an importer in establishing eligibility to participate in VQIP under section 806 of the FD&C Act. This statutory requirement is reflected in proposed § 1.681(a). Proposed § 1.681(b) states that FDA may require renewal of a food certification at any time FDA determines appropriate under section 801(q)(4)(A) of the FD&C Act.

10. General Requirements

TABLE 10—PROPOSED GENERAL REQUIREMENTS

Proposed rule section	Title
1.690	How will FDA make information about recognized accreditation bodies and accredited auditors/certification bodies available to the public?
1.691	How do I request reconsideration of a denial by FDA of an application or a waiver request?
1.692	How do I request internal agency review of a denial of an application or waiver request upon reconsideration?
1.693	How do I request a regulatory hearing on a revocation of recognition or withdrawal of accreditation?

a. *How will FDA make information about recognized accreditation bodies and accredited auditors/certification bodies available to the public? (Proposed § 1.690).* This proposed rule explains how and where we would make information on the accredited third-party audits and certification program public. Section 808(g) of the FD&C Act requires us to establish a publicly available registry of recognized accreditation bodies and accredited auditors/certification bodies, including their names and contact information.

Proposed § 1.690 provides that we will post on our Web site a registry of recognized accreditation bodies and of accredited auditors/certification bodies

and explains that we may meet the obligation with respect to accredited auditors/certification bodies by establishing links on our Web site to the Web sites of recognized accreditation bodies, who are required to maintain this information for auditors/certification bodies they accredit under this program. As appropriate based on available resources, we may use such links in the interest of minimizing the administrative burden on us and in acknowledgement that some accreditation bodies currently maintain such information on their Web sites. We are seeking comment on our proposed public registry.

b. *How do I request reconsideration of a denial by FDA of an application or a waiver request? (Proposed § 1.691).* This proposed rule would establish procedures for an applicant or requestor to seek reconsideration of a denial. Under proposed § 1.691, accreditation bodies and certification bodies may ask us to reconsider an application or waiver request we previously denied. The types of applications and requests that may be reconsidered are: (1) Denial of an application for recognition or for renewal of recognition; (2) denial of an application submitted to reinstate recognition; or (3) denial of a request for a waiver of the 13-month limit on audit agents or for a waiver extension; (4) denial of an application for direct accreditation or for renewal of direct accreditation; and (5) denial of an application for reaccreditation.

The procedures described in proposed § 1.691 require submission of the request for reconsideration within 10 business days of the date of such decision, in accordance with the procedures described in the notice of denial, including requirements relating to submission of supporting information. Within a reasonable time after completing its review and evaluation of the request for reconsideration and the supporting information (if any) submitted, we will notify the requestor, in writing, of our decision to grant the application or waiver request upon reconsideration, or our decision to deny upon reconsideration the application or waiver request.

c. *How do I request internal Agency review of a denial of an application or waiver request upon reconsideration? (Proposed § 1.692).* This proposed rule would offer additional process for applicants or requestors whose request for reconsideration was denied.

Proposed § 1.692 states that the requestor who received a denial upon reconsideration may seek internal Agency review of such denial under 21 CFR 10.75(c)(1), which is a currently established process for review but different than the initial review process under proposed § 1.691. The request for internal Agency review must be submitted within 10 business days of the date of denial upon reconsideration, in accordance with procedures described in the denial upon reconsideration and must be signed by the accreditation body or certification body, as appropriate, or by an individual authorized to act on its behalf. Internal Agency review of the denial upon reconsideration must be based on the information in the administrative file, which will include any supporting information submitted under proposed § 1.691(c). Within a reasonable time after completing the review and evaluation of the administrative file, we will notify the requestor, in writing, of our decision to overturn the denial and grant the application or waiver request or to affirm the denial. Affirmation of a denial constitutes final Agency action for purposes of 5 U.S.C. 702.

d. *How do I request a regulatory hearing on a revocation of recognition or withdrawal of accreditation? (Proposed § 1.693).* This proposed rule explains the procedures that would be used for challenges to revocation of recognition or withdrawal of accreditation.

Under proposed § 1.693(a) an accreditation body whose recognition was revoked (or an individual authorized to act on its behalf) may submit a request for a regulatory hearing, under part 16, on the revocation. The request must be submitted within 10 business days of the date of revocation. Similarly, under proposed § 1.693(b) a certification body whose accreditation was withdrawn by FDA may submit a request for a part 16 regulatory hearing on the withdrawal. Such request must be submitted within 10 business days of the date of withdrawal. Written notices of revocation and of withdrawal will contain all of the elements required by § 16.22 of this chapter and will thereby constitute the notice of an opportunity for hearing under part 16 of this chapter.

Under proposed § 1.693(c), the request for a regulatory hearing under paragraph (a) or (b) of this section must be submitted with a written appeal that responds to the bases for our decision described in the written notice of revocation or withdrawal, as appropriate, together with any supporting information upon which the requestor is relying. The request, appeal, and supporting information must be submitted in accordance with the procedures described in the notice.

Proposed § 1.693 makes clear that the submission of a request for a regulatory hearing under this subpart will not operate to delay or stay the effect of our decision to revoke recognition of an accreditation body or to withdraw accreditation of a certification body unless we determine that delay or a stay is in the public interest.

Under proposed § 1.693(e) and (f), the presiding officer for a regulatory hearing under this subpart will be designated after a request for a regulatory hearing is submitted to us. The presiding officer may deny a request for regulatory hearing under this subpart pursuant to § 16.26(a) of this chapter.

Proposed § 1.693(g) states that if a hearing request is granted, the hearing will be held within 10 business days after the date the request was filed or, if applicable, within a time frame agreed upon in writing by requestor and the presiding officer. The presiding officer may require that a hearing conducted under this subpart be completed within 1 business day, as appropriate.

The presiding officer must conduct the hearing under part 16 of this chapter, except that, under § 16.5(b) of this chapter, the procedures for a regulatory hearing described in part 16 of this chapter apply only to the extent that such procedures are supplementary and not in conflict with the procedures specified for the conduct of regulatory hearings under this subpart. Based on § 16.5(b), the following requirements of part 16 of this chapter are inapplicable to regulatory hearings conducted under this subpart: The requirements of § 16.22 (Initiation of a regulatory hearing), § 16.24(e) (Timing) and (f) (Contents of notice), § 16.40 (Commissioner), § 16.95(b) (Administrative decision and record for decision), and § 16.119 (Reconsideration and stay of action).

Proposed § 1.693(g)(4) states that a decision by the presiding officer to affirm the revocation of recognition or the withdrawal of accreditation that served as the basis for the request for a regulatory hearing is considered a final Agency action for purposes of 5 U.S.C. 702.

11. Audits for Other Purposes

TABLE 11—PROPOSED USE OF REGULATORY AUDIT REPORTS UNDER SUBPART L

Proposed rule section	Title
1.698	May importers use reports of regulatory audits by accredited auditors/certification bodies for purposes of subpart L of this part?

May importers use reports of regulatory audits by accredited auditors/certification bodies for purposes of subpart L of this part? (Proposed § 1.698). This proposed rule would allow importers to use certain information from accredited auditors/certification bodies in meeting the Foreign Supplier Verification Program (FSVP) requirements.

Proposed § 1.698 allows an importer, as defined in the proposed regulations for the FSVP published elsewhere in this edition of the **Federal Register**, to use a report of a regulatory audit of a foreign supplier (which is an eligible entity), in meeting the verification requirements under the proposed FSVP regulations.

The FSVP proposed rule would require importers to verify that hazards identified as reasonably likely to occur are being adequately controlled. Onsite auditing may be used under the FSVP proposed rule. While the FSVP proposed rule would not require use of accredited auditors/certification bodies, we believe accredited auditor/certification body program we are establishing under section 808 of the FD&C Act will help ensure the rigor and objectivity of audits performed by auditors/certification bodies accredited under our program.

Proposed § 1.698 allows an importer required (or having the option) to perform onsite auditing of its foreign supplier to comply with the FSVP proposed rule to use the results of a regulatory audit in meeting such requirement. The regulatory audit report of the foreign supplier would be the documentation of such verification activity. (We have tentatively concluded that the report of a consultative audit would not be appropriate documentation for purposes of the proposed FSVP rule. Among other things, consultative audits are defined as being conducted for internal purposes only and are conducted against industry standards as well as the requirements of the FD&C Act.)

We see significant value in having the food industry use competent and impartial auditors/certification bodies to conduct food safety audits of their facilities and are aware that many leaders in the food industry are working to assure those objectives are achieved. We believe that the accredited third-party audits and certification program we are establishing to implement section 808 of the FD&C Act offers a credible system to help ensure that the audits conducted by auditors/certification bodies accredited under our program and the certifications they issue based on the results of those audits are valid and reliable not only to us, but also to companies throughout the supply chain of the audited facility. We further believe that our involvement, as the regulator responsible with oversight of these facilities, offers an added level of assurance to consumers in the validity of these third-party audits—a confidence they otherwise might not gain from private audit systems.

It is our intent that the program we establish for foreign food safety audits be solidly grounded in the key principles set out in the statute and in the international standards and best practices that are currently used by leaders at the forefront of efforts to ensure auditor competency and objectivity. We realize that the same principles and standards that are features of a rigorous and credible program for audits of foreign firms would likewise hold great merit for audits of domestic food facilities.

We seek comment on the value of, and need for, a program established and administered by FDA for the use of accredited auditors/certification bodies to conduct domestic food safety audits. We seek input on whether accreditation bodies, auditors/certification bodies, and domestic food facilities might be interested in such a program and the incentives we might offer to encourage participation.

B. Proposed Revisions to Part 16

We are proposing a conforming change to the section of the CFR that describes procedures for regulatory hearings that would add revocation of recognition of an accreditation body and withdrawal of accreditation of a third-party auditor/certification body to the list of actions for which a hearing under this part may be held. The affected section in title 21 of the CFR is 16.1.

V. Analysis of Environmental Impact

We have carefully considered the potential environmental effects of this action. We have concluded, under 21 CFR 25.30(h), that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required (Ref. 34).

VI. Federalism

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

VII. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

VIII. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified all the Web site addresses in this References section, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**).

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34. McCarthy, A. and Food and Drug Administration. ''Memorandum: Establishment of regulation to accredit third-party auditors and laboratories as required by the Food Safety Modernization Act of 2011.''

List of Subjects

21 CFR Part 1

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

21 CFR Part 16

Administrative practice and procedure.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 1 and 16 be amended as follows:

PART 1—GENERAL ENFORCEMENT REGULATIONS

■ 1. The authority citation for 21 CFR part 1 is revised to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 19 U.S.C. 1490, 1491; 21 U.S.C. 321, 331, 332, 333, 334, 335a, 343, 350c, 350d, 350k, 352, 355, 360b, 362, 371, 374, 381, 382, 384a, 384b, 384d, 393, 42 U.S.C. 216, 241, 243, 262, 264.

■ 2. Add subpart M, consisting of §§ 1.600 through 1.698, to read as follows:

Subpart M—Accredited Third-Party Food Safety Audits and Food or Facility Certification

1.600 What definitions apply to this subpart?
1.601 Who is subject to this subpart?

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1.610 Who is eligible for recognition?
1.611 What legal authority must an accreditation body have to qualify for recognition?
1.612 What competency and capacity must an accreditation body have to qualify for recognition?
1.613 What protections against conflicts of interest must an accreditation body have to qualify for recognition?
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1.615 What records procedures must an accreditation body have to qualify for recognition?

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1.620 How must a recognized accreditation body assess third-party auditors/certification bodies seeking accreditation?
1.621 How must a recognized accreditation body monitor the performance of third-party auditors/certification bodies it accredits?
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Accreditation of Third-Party Auditors/Certification Bodies Under This Subpart

1.640 Who is eligible for accreditation?
1.641 What legal authority must a third-party auditor/certification body have to qualify for accreditation?
1.642 What competency and capacity must a third-party auditor/certification body have to qualify for accreditation?
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1.650 How must an accredited auditor/certification body ensure its audit agents are competent and objective?
1.651 How must an accredited auditor/certification body conduct a food safety audit of an eligible entity?
1.652 What must an accredited auditor/certification body include in food safety audit reports?
1.653 What must an accredited auditor/certification body do when issuing food or facility certifications?
1.654 When must an accredited auditor/certification body monitor an eligible entity with food or facility certification?
1.655 How must an accredited auditor/certification body monitor its own performance?
1.656 What reports and notifications must an accredited auditor/certification body submit?
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1.660 Where do I apply for accreditation or renewal of accreditation by a recognized accreditation body?
1.661 What is the duration of accreditation?
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1.663 How do I request an FDA waiver or waiver extension for the 13-month limit for audit agents conducting regulatory audits?
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1.680 How and when will FDA monitor eligible entities?
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1.698 May importers use reports of regulatory audits by accredited auditors/certification bodies for purposes of subpart L of this part?

Subpart M—Accredited Third-Party Food Safety Audits and Food or Facility Certification

Authority: 15 U.S.C. 1453, 1454, 1455; 19 U.S.C. 1490, 1491; 21 U.S.C. 321, 331, 332, 333, 334, 335a, 343, 350c, 350d, 350k, 352, 355, 360b, 362, 371, 374, 381, 382, 384a, 384b, 384d, 393, 42 U.S.C. 216, 241, 243, 262, 264.

§ 1.600 What definitions apply to this subpart?

(a) *The FD&C Act* means the Federal Food, Drug, and Cosmetic Act.

(b) Except as otherwise defined in paragraph (c) of this section, the definitions of terms in section 201 of the FD&C Act apply when the terms are used in this subpart.

(c) In addition, for the purposes of this subpart:

Accreditation means a determination by a recognized accreditation body (or, in the case of direct accreditation, by FDA) that a third-party auditor/certification body meets the applicable requirements of this subpart, including the model accreditation standards.

Accreditation body means an authority that performs accreditation of third-party auditors/certification bodies.

Accredited auditor/certification body means a third-party auditor/certification body that a recognized accreditation body (or, in the case of direct accreditation, FDA) has determined meets the applicable requirements of this subpart and is authorized to conduct food safety audits and to issue food or facility certifications to eligible entities.

Audit means:

(1) With respect to an accreditation body, the systematic, independent, and documented examination (through observation, investigation, and records review) by FDA to assess the accreditation body's authority, qualifications (including its expertise and training program), and resources; its procedures for quality assurance, conflicts of interest, and records; its performance in accreditation activities; and its capability to meet the applicable requirements of this subpart.

(2) With respect to a third-party auditor/certification body, the systematic, independent, and documented examination (through observation, investigation, and records review) by a recognized accreditation body (or, in the case of direct accreditation, by FDA) to assess the third-party auditor's/certification body's authority, qualifications (including its expertise and training program), and resources; its procedures for quality assurance, conflicts of interest, and records; its performance in auditing and certification activities; and its capability to meet the applicable requirements of this subpart; and

(3) With respect to an eligible entity, the systematic, independent, and documented examination (through observation, investigation, records review, and as appropriate, sampling and laboratory analysis) by an accredited auditor/certification body to assess the entity, its facility, system(s), and food using audit criteria for consultative or regulatory audits, including compliance with any applicable requirements for preventative controls, sanitation, monitoring, verification, corrective actions, and recalls, and, for consultative audits, also includes an assessment of compliance with applicable industry standards and practices.

Audit agent means an individual who is an employee or other agent of an accredited auditor/certification body who, although not individually accredited, is qualified to conduct food safety audits on behalf of an accredited auditor/certification body. An audit agent includes a contractor of the accredited auditor/certification body.

Certification body means a foreign government, agency of a foreign government, foreign cooperative, or any other third party that is eligible to be considered for accreditation to conduct food safety audits and to certify that eligible entities meet applicable requirements of the FD&C Act. A certification body may be a single individual or an organization. A certification body may use audit agents to conduct food safety audits. *Certification body* has the same meaning as *Third-party auditor* as that term is defined in section 808 of the FD&C Act and in this subpart.

Consultative audit means an audit of an eligible entity:

(1) To determine whether such entity is in compliance with applicable requirements of the FD&C Act and industry standards and practices; and

(2) The results of which are for internal purposes only and cannot be used to determine eligibility for a food or facility certification issued under this subpart or in meeting the requirements

for an onsite audit of a foreign supplier under subpart L of this part.

Direct accreditation means accreditation of a third-party auditor/certification body by FDA.

Eligible entity means a foreign entity that chooses to be subject to a food safety audit by an accredited auditor/certification body. Eligible entities include foreign facilities subject to the registration requirements of subpart H of this part.

Facility means any structure, or structures of an eligible entity under one ownership at one general physical location, or, in the case of a mobile facility, traveling to multiple locations, that manufactures/processes, packs, or holds food for consumption in the United States. Transport vehicles are not facilities if they hold food only in the usual course of business as carriers. A facility may consist of one or more contiguous structures, and a single building may house more than one distinct facility if the facilities are under separate ownership. The private residence of an individual is not a facility. Non-bottled water drinking water collection and distribution establishments and their structures are not facilities.

Facility certification means an attestation, issued for purposes of section 806 of the FD&C Act by an accredited auditor/certification body, after conducting a regulatory audit and any other activities necessary to establish that a facility meets the applicable requirements of the FD&C Act.

Food certification means an attestation, issued for purposes of section 801(q) of the FD&C Act by an accredited auditor/certification body, after conducting a regulatory audit and any other activities necessary to establish that a food meets the applicable requirements of the FD&C Act.

Food safety audit means a regulatory audit or a consultative audit.

Foreign cooperative means an entity that aggregates food from growers or processors that is intended for export to the United States.

Recognized accreditation body means an accreditation body that FDA has determined meets the applicable requirements of this subpart and is authorized to accredit third-party auditors/certification bodies under this subpart.

Regulatory audit means an audit of an eligible entity:

(1) To determine whether such entity is in compliance with the provisions of the FD&C Act; and

(2) The results of which are used in determining eligibility for food certification under section 801(q) of the FD&C Act or facility certification under section 806 of the FD&C Act, and may be used by an importer in meeting the requirements for an onsite audit of a foreign supplier under subpart L of this part.

Relinquishment means:

(1) With respect to an accreditation body, a decision to cede voluntarily its authority to accredit third-party auditors/certification bodies as a recognized accreditation body; and

(2) With respect to a third-party auditor/certification body, a decision to cede voluntarily its authority to conduct food safety audits and to issue food and facility certifications to eligible entities.

Self-assessment means a systematic assessment conducted by an accreditation body or by a third-party auditor/certification body to determine whether it meets the applicable requirements of this subpart.

Third-party auditor means a foreign government, agency of a foreign government, foreign cooperative, or any other third party that is eligible to be considered for accreditation to conduct food safety audits and to certify that eligible entities meet the applicable requirements of the FD&C Act. A third-party auditor may be a single individual or an organization. A third-party auditor may use audit agents to conduct food safety audits. *Third-party auditor* has the same meaning as *Certification body* as that term is defined in this subpart.

§ 1.601 Who is subject to this subpart?

(a) *Accreditation bodies.* Any accreditation body seeking recognition from FDA to accredit third-party auditor/certification bodies for conducting food safety audits and for issuing food and facility certifications to eligible entities.

(b) *Third-party auditors/certification bodies.* Any third-party auditor/certification body seeking accreditation from a recognized accreditation body or direct accreditation by FDA for:

(1) Conducting food safety audits; and

(2) Issuing food and facility certifications that may be used in satisfying a condition of admissibility of an article of food under section 801(q) of the FD&C Act; or in meeting the eligibility requirements for the Voluntary Qualified Importer Program under section 806 of the FD&C Act.

(c) *Eligible entities.* Any eligible entity seeking a food safety audit or a food or facility certification from an accredited auditor/certification body, except as provided in paragraph (d) of this section.

(d) *Limited exemptions from section 801(q) of the FD&C Act.* (1) The certification of food under section 801(q) of the FD&C Act does not apply with respect to alcoholic beverages from an eligible entity that is a facility that meets the following two conditions:

(i) Under the Federal Alcohol Administration Act (27 U.S.C. 201 *et seq.*) or chapter 51 of subtitle E of the Internal Revenue Code of 1986 (26 U.S.C. 5001 *et seq.*), the facility is a foreign facility of a type that, if it were a domestic facility, would require obtaining a permit from, registering with, or obtaining approval of a notice or application from the Secretary of the Treasury as a condition of doing business in the United States; and

(ii) Under section 415 of the FD&C Act, the facility is required to register as a facility because it is engaged in manufacturing/processing one or more alcoholic beverages.

(2) Certification of food under section 801(q) of the FD&C Act does not apply with respect to food other than alcoholic beverages that is from a facility described in paragraph (d)(1) of this section, provided such food:

(i) Is in prepackaged form that prevents any direct human contact with such food; and

(ii) Constitutes not more than 5 percent of the overall sales of the facility, as determined by the Secretary of the Treasury.

Recognition of Accreditation Bodies Under This Subpart

§ 1.610 Who is eligible for recognition?

An accreditation body is eligible for recognition by FDA if it can demonstrate that it meets the requirements of §§ 1.611 to 1.615.

§ 1.611 What legal authority must an accreditation body have to qualify for recognition?

(a) An accreditation body seeking recognition must demonstrate that it has the authority (as a governmental entity or through contractual rights) to perform such assessments of a third-party auditor/certification body as are necessary to determine its capability to audit and certify food facilities and food, including authority to:

(1) Review any relevant records;

(2) Conduct onsite assessments of the performance of third-party auditors/certification bodies, such as by witnessing the performance of a statistically significant number of personnel and other agents conducting assessments;

(3) Perform any reassessments or surveillance necessary to monitor

compliance of accredited auditors/certification bodies; and

(4) Suspend, withdraw, or reduce the scope of accreditation for failure to comply with the requirements of accreditation.

(b) An accreditation body seeking recognition must demonstrate that it is capable of exerting any authority necessary to meet the requirements of recognition in §§ 1.620 to 1.625 and the procedures in §§ 1.630, 1.635, and 1.636, if recognized.

§ 1.612 What competency and capacity must an accreditation body have to qualify for recognition?

An accreditation body seeking recognition must demonstrate that it has:

(a) The resources required to adequately implement its accreditation program, including:

(1) Adequate numbers of personnel and other agents with relevant knowledge, skills, and experience to effectively assess the qualifications of third-party auditors/certification bodies seeking accreditation and to effectively monitor the performance of third-party auditors/certification bodies; and

(2) Adequate financial resources for its operations; and

(b) The capability to meet the assessment and monitoring requirements of §§ 1.620 and 1.621, the reporting and notification requirements of § 1.623, and the procedures in §§ 1.630, 1.631, 1.635, and 1.636, if recognized.

§ 1.613 What protections against conflicts of interest must an accreditation body have to qualify for recognition?

An accreditation body must demonstrate that it has:

(a) Implemented written measures to protect against conflicts of interest between the accreditation body (and its officers, personnel, and other agents) and third-party auditors/certification bodies (and their officers, personnel, and other agents) seeking accreditation from, or accredited by, such accreditation body; and

(b) The capability to meet the conflict of interest requirements in § 1.624, if recognized.

§ 1.614 What quality assurance procedures must an accreditation body have to qualify for recognition?

An accreditation body seeking recognition must demonstrate that it has:

(a) Implemented a written program for monitoring and assessing the performance of its officers, personnel and other agents and its accreditation program, including procedures to:

(1) Identify areas in its accreditation program or performance that need improvement; and

(2) Quickly execute appropriate corrective actions when problems are found; and

(b) The capability to meet the quality assurance requirements of § 1.622, if recognized.

§ 1.615 What records procedures must an accreditation body have to qualify for recognition?

An accreditation body seeking recognition must demonstrate that it has:

(a) Implemented written procedures to establish, control, and retain records (including documents and data) for the period of time necessary to meet its contractual and legal obligations and to provide an adequate basis for assessing its program and performance; and

(b) Is capable of meeting the reporting and notification requirements of § 1.623 and the records requirements of § 1.625, if recognized.

Requirements for Recognized Accreditation Bodies Under This Subpart

§ 1.620 How must a recognized accreditation body assess third-party auditors/certification bodies seeking accreditation?

(a) Prior to accrediting a third-party auditor/certification body under this subpart, a recognized accreditation body must perform, at a minimum, the following:

(1) In the case of a foreign government or an agency of a foreign government, such reviews and audits of its food safety programs, systems, and standards as are necessary to determine that it meets the eligibility requirements of § 1.640(b) and any requirements specified in FDA model accreditation standards regarding qualifications for accreditation, including legal authority, competency, capacity, conflicts of interest, quality assurance, and records.

(2) In the case of a foreign cooperative that aggregates the products of growers or processor or any other third-party seeking accreditation as a third-party auditor/certification body, such reviews and audits of the training and qualifications of audit agents used by such cooperative or other third party and such reviews of internal systems and any other investigation of the cooperative or other third party necessary to determine that it meets the eligibility requirements of § 1.640(c) and any requirements specified in FDA model accreditation standards regarding qualifications for accreditation, including legal authority, competency, capacity, conflicts of interest, quality assurance, and records.

(3) In conducting a review and audit under paragraph (a)(1) or (a)(2) of this section, observe a statistically significant number of onsite audits conducted by the third-party auditor/certification body (or its audit agents) to assess compliance with the applicable requirements of the FD&C Act.

(b) A recognized accreditation body must require a third-party auditor/certification body, as a condition of accreditation under this subpart, to comply with the reports and notification requirements of §§ 1.652 and 1.656 and to agree to submit electronic food and facility certifications, in English, to FDA for purposes of sections 801(q) and 806 of the FD&C Act.

(c) A recognized accreditation body must maintain records on any denial of accreditation (in whole or in part) and on any withdrawal, suspension, or reduction in scope of accreditation of a third-party auditor/certification body under this subpart. The records must include the name and contact information for the third-party auditor/certification body; the scope of accreditation denied, withdrawn, suspended, or reduced; and the basis for such action.

(d) A recognized accreditation body must implement written procedures for receiving and addressing appeals from any third-party auditor/certification body challenging an adverse decision associated with accreditation under this subpart and for investigating and deciding on appeals in a fair and meaningful manner. The appeals procedures must provide similar protections to those offered by FDA under §§ 1.692 and 1.693, including requirements to:

(1) Make the appeals procedures publicly available;

(2) Use competent, independent persons to investigate and decide appeals;

(3) Advise third-party auditors/certification bodies of the final decisions on their appeals; and

(4) Maintain records under § 1.625 of appeals, final decisions on appeals, and the bases for such decisions.

§ 1.621 How must a recognized accreditation body monitor the performance of third-party auditors/certification bodies it accredits?

A recognized accreditation body must annually conduct a comprehensive assessment of the performance of each auditor/certification body it accredited under this subpart by reviewing the auditor's/certification body's self-assessments (including information on

compliance with the conflict of interest requirements of §§ 1.643 and 1.657); its regulatory audit reports and notifications submitted to FDA under § 1.656; and any other information reasonably available to the accreditation body:

(a) Regarding the compliance history of eligible entities it certified; or

(b) That is otherwise relevant to a determination whether the accredited auditor/certification body is in compliance with this subpart.

§ 1.622 How must a recognized accreditation body monitor its own performance?

(a) A recognized accreditation body must annually, and as required under § 1.664(g), conduct a self-assessment that includes evaluation of:

(1) The performance of its officers, personnel, or other agents in activities under this subpart and the degree of consistency among such performances;

(2) The compliance of the accreditation body and its officers, personnel, and other agents, with the conflict of interest requirements of § 1.624; and

(3) If requested by FDA, any other aspects of its performance relevant to a determination whether the accreditation body is in compliance with this subpart.

(b) As a means to evaluate the accreditation body's performance, the self-assessment must include onsite observation of regulatory audits by a statistically significant number of third-party auditors/certification bodies it accredited under this subpart.

(c) Based on the evaluations conducted under paragraphs (a) and (b) of this section, the accreditation body must:

(1) Identify any area(s) needing improvement;

(2) Quickly implement effective corrective action(s) to address those area(s); and

(3) Establish and maintain records of such corrective action(s) under § 1.625.

(d) The accreditation body must prepare, and as required by § 1.623(b) submit, a written report of the results of its self-assessment that includes:

(1) A description of any corrective actions taken under paragraph (c) of this section;

(2) A statement disclosing the extent to which the accreditation body, and its officers, personnel, and other agents, complied with the conflict of interest requirements in § 1.624; and

(3) A statement attesting to the extent to which the accreditation body complied with applicable requirements of this subpart.

§ 1.623 What reports and notifications must a recognized accreditation body submit to FDA?

(a) *Reporting results of assessments of certification body performance.* A recognized accreditation body must submit to FDA electronically, in English, a report of the results of any assessment conducted under § 1.621, no later than 45 days after completing such assessment. The report must include an up-to-date list of any audit agent used by the accredited auditor/certification body to conduct food safety audits under this subpart.

(b) *Reporting results of accreditation body self-assessments.* A recognized accreditation body must submit to FDA electronically, in English, a report of the results of an annual self-assessment required under § 1.622, no later than 45 days after completing such self-assessment and, for a recognized accreditation body subject to § 1.664(g)(1), must submit a report of such self-assessment to FDA within 2 months.

(c) *Immediate notification to FDA.* A recognized accreditation body must notify FDA electronically, in English, immediately upon:

(1) Granting accreditation to an auditor/certification body under this subpart, and include:

(i) The name, address, and telephone number of the auditor/certification body;

(ii) The name of one or more officers of the auditor/certification body;

(iii) A list of the auditor's/certification body's audit agents; and

(iv) The scope of accreditation and the date on which it was granted.

(2) Withdrawing, suspending, or reducing the scope of an accreditation under this subpart, and include:

(i) The basis for such action; and

(ii) Any additional changes to accreditation information previously submitted to FDA under paragraph (c)(1) of this section.

(3) Determining that an auditor/certification body it accredited failed to comply with § 1.653 in issuing a food or facility certification under this subpart, and include:

(i) The basis for such determination; and

(ii) Any changes to accreditation information previously submitted to FDA under paragraph (c)(1) of this section.

(d) *Other notification to FDA.* A recognized accreditation body must notify FDA electronically, in English, within 30 days after:

(1) Denying accreditation (in whole or in part) under this subpart and include:

(i) The name, address, and telephone number of the auditor/certification body;

(ii) The name of one or more officers of the auditor/certification body;

(iii) The scope of accreditation requested; and

(iv) The basis for such denial.

(2) Making any significant change that would affect the manner in which it complies with the requirements in §§ 1.610 to 1.625 and include:

(i) A description of the change; and

(ii) An explanation for the purpose of the change.

§ 1.624 How must a recognized accreditation body protect against conflicts of interest?

(a) A recognized accreditation body must implement a written program to protect against conflicts of interest between the accreditation body (and its officers, personnel, and other agents) and a third-party auditor/certification body (and its officers, personnel, and other agents) seeking accreditation from, or accredited by, such accreditation body, including the following:

(1) Ensuring that the accreditation body (and its officers, personnel, or other agents) do not own or have a financial interest in, manage, or otherwise control the third-party auditor/certification body (or any affiliate, parent, or subsidiary); and

(2) Prohibiting officers, personnel, or other agents of the accreditation body from accepting any money, gift, gratuity, or item of value from the third-party auditor/certification body.

(3) The items specified in paragraph (a)(2) of this section do not include:

(i) Money representing payment of fees for accreditation services and reimbursement of direct costs associated with an onsite audit or assessment of the third-party auditor/certification body; or

(ii) Meals, of de minimis value, provided on the premises where the audit or assessment is conducted.

(b) The financial interests of the spouses and children younger than 18 years of age of officers, personnel, and other agents of a recognized accreditation body will be considered the financial interests of such officers, personnel, and other agents of the accreditation body.

(c) A recognized accreditation body must maintain on its Web site an up-to-date list of the auditors/certification bodies it accredited under this subpart and must identify the duration and scope of each accreditation and date(s) on each the accredited auditor/certification body paid any fee or reimbursement associated with such accreditation.

§ 1.625 What records requirements must a recognized accreditation body meet?

(a) A recognized accreditation body must maintain electronically for 5 years records (including documents and data), in English, demonstrating its compliance with this subpart, including records relating to:

(1) Applications for accreditation and renewal of accreditation under § 1.660;

(2) Decisions to grant, deny, suspend, withdraw, or reduce the scope of an accreditation;

(3) Challenges to adverse accreditation decisions under § 1.620(c);

(4) Its monitoring of accredited auditors/certification bodies under § 1.621;

(5) Self-assessments and corrective actions under § 1.622;

(6) Regulatory audit reports, including any supporting information, that an accredited auditor/certification body may have submitted; and

(7) Any reports or notifications to FDA under § 1.623, including any supporting information.

(b) A recognized accreditation body must make records required by paragraph (a) of this section available for inspection and copying promptly upon written request of an authorized FDA officer or employee at the place of business of the accreditation body or at a reasonably accessible location. If the records required by paragraph (a) of this section are requested by FDA electronically, the records must be submitted to FDA electronically, in English, not later than 10 business days after the date of the request.

(c) A recognized accreditation body must not prevent or interfere with FDA's access to its accredited auditors/certification bodies and the auditor/certification body records required by § 1.658.

Procedures for Recognition of Accreditation Bodies Under This Subpart

§ 1.630 How do I apply to FDA for recognition or renewal of recognition?

(a) *Applicant for recognition.* An accreditation body seeking recognition must submit an application demonstrating that it meets the eligibility requirements in § 1.610.

(b) *Applicant for renewal of recognition.* An accreditation body seeking renewal of its accreditation must submit a renewal application demonstrating that it continues to meet the eligibility requirements in § 1.610.

(c) *Submission.* Recognition and renewal applications and any documents provided as part of the application process must be submitted electronically, in English. An applicant must provide any translation and interpretation services needed by FDA to process the application, including during onsite audits or assessments of the applicant by FDA.

(d) *Signature.* Recognition and renewal applications must be signed by the applicant or by any individual authorized to act on behalf of the applicant for purposes of seeking recognition or renewal of recognition.

§ 1.631 How will FDA review applications for recognition and for renewal of recognition?

(a) FDA will review a recognition or renewal application on a first in, first out basis according to the date on which the application was submitted in complete form.

(b) FDA will evaluate any completed recognition or renewal application to determine whether the applicant meets the eligibility requirements in § 1.610 and will notify the applicant, in writing, whether the application has been approved or denied. FDA may make such notification electronically.

(c) When FDA notifies an applicant that its recognition or renewal application has been approved, the notification will list any conditions associated with the recognition.

(d) If FDA denies a recognition or renewal application, the notification will state the basis for such denial and will provide the address and procedures for requesting reconsideration of the application under § 1.691.

(e) If FDA does not reach a final decision on a renewal application before an accreditation body's recognition terminates by expiration, FDA may extend such recognition for a specified period of time or until the agency reaches a final decision on the renewal application.

§ 1.632 What is the duration of recognition?

FDA may grant recognition of an accreditation body for a period not to exceed 5 years.

§ 1.633 How will FDA monitor recognized accreditation bodies?

(a) FDA will periodically evaluate the performance of each recognized accreditation body to determine its compliance with the applicable requirements of this subpart. Such evaluation must occur by at least 4 years after the date of accreditation for a 5-year term of recognition, or by no later than mid-term point for recognition granted for less than 5 years. FDA may conduct additional performance evaluations of a recognized accreditation body at any time.

(b) An FDA performance evaluation may include onsite assessments of statistically significant numbers of auditors/certification bodies the recognized accreditation body accredited and onsite audits of eligible entities such auditors/certification bodies certified. These may be conducted at any time, with or without the accreditation body or auditor/certification body present.

§ 1.634 When will FDA revoke recognition?

(a) *Grounds for revocation of recognition.* FDA will revoke the recognition of an accreditation body for any one or more of the following:

(1) Refusal to allow FDA to access records required by § 1.625, or to conduct an audit, assessment, or investigation of the accreditation body or of a third-party auditor/certification body it accredited to ensure the accreditation body's continued compliance with the requirements of this subpart.

(2) Failure to take timely and necessary corrective action when:

(i) The accreditation of an auditor/certification body it accredited is withdrawn by FDA under § 1.664(a);

(ii) A significant problem with the accreditation body is identified through self-assessment under § 1.622, monitoring under § 1.621, or self-assessment by one or more of its accredited auditors/certification bodies under § 1.655; or

(iii) Directed by FDA to ensure compliance with this subpart.

(3) A determination by FDA that the accreditation body has committed fraud or has submitted material false statements to the agency.

(4) A determination by FDA that there is otherwise good cause for revocation, including:

(i) Demonstrated bias or lack of objectivity when conducting activities under this subpart; or

(ii) Failure to adequately support one or more decisions to grant accreditation under this subpart.

(b) *Records request associated with revocation.* To assist in determining whether revocation is warranted under paragraph (a) of this section, FDA may request records of the accreditation body required by § 1.625 or the records, required by § 1.658, of one or more of the auditors/certification bodies it accredited under this subpart.

(c) *Notice to the accreditation body of revocation of recognition.* (1) Upon revocation, FDA will notify the accreditation body electronically, in English, stating the grounds for revocation, the procedures for requesting a regulatory hearing under

§ 1.693 on the revocation, and the procedures for requesting reinstatement of recognition under § 1.636.

(2) Within 10 business days of the date of revocation, the accreditation body must notify FDA electronically, in English, of the location where the records required by § 1.625 will be maintained.

(d) *Effect of revocation of recognition on accredited auditors/certification bodies.* (1) FDA will notify an accredited auditor/certification body, electronically and in English, if the recognition of its accreditation body is revoked. Such auditor's/certification body's accreditation will remain in effect if the auditor/certification body:

(i) No later than 2 months after the revocation, conducts a self-assessment under § 1.655 and reports the results of the self-assessment to FDA under § 1.656(b); and

(ii) No later than 1 year after the revocation, becomes accredited by a recognized accreditation body or by FDA through direct accreditation.

(2) FDA may withdraw the accreditation of a third-party auditor/certification body whenever FDA determines there is good cause for withdrawal of accreditation under § 1.664.

(e) *Effect of revocation of recognition on food or facility certifications issued to eligible entities.* A food or facility certification issued by an auditor/certification body accredited by an accreditation body prior to revocation of recognition will remain in effect until the certificate terminates by expiration. If FDA has reason to believe that a food certification issued for purposes of section 801(q) of the FD&C Act is not valid or reliable, FDA may refuse to consider the certification in determining the admissibility of the article of food for which the certification was offered.

(f) *Public notice of revocation and the status of accreditations and food and facility certifications.* FDA will provide notice on the Web site described in § 1.690 of the revocation of recognition of an accreditation body under this subpart.

§ 1.635 How do I voluntarily relinquish recognition?

(a) An accreditation body that decides to relinquish recognition before it terminates by expiration must notify FDA electronically, in English, at least 6 months before relinquishing such authority and must identify the location where the records required by § 1.625 will be maintained. An accreditation body waives the right to a hearing when relinquishing its recognition under this subpart.

(b) No later than 15 business days after notifying FDA, the accreditation body must notify any third-party auditor/accreditation body currently accredited that it intends to relinquish its recognition, specify the date on which it will occur. The accreditation body must establish and maintain records of such notification under § 1.625.

(c) An accreditation granted by an accreditation body prior to relinquishing its recognition will remain in effect, subject to reaccreditation under § 1.665, except where FDA determines that there is good cause for withdrawal of accreditation under § 1.664.

(d) A food certification issued by such accredited auditor/certification body will remain in effect until it terminates by expiration, unless FDA requires renewal of the certification under section 801(q)(4)(A) of the FD&C Act prior to its expiration. If FDA has reason to believe that a certification issued for purposes of section 801(q) of the FD&C Act is not valid or reliable, FDA may refuse to consider the certification in determining the admissibility of the article of food for which the certification was offered.

(e) FDA will provide notice on the Web site described in § 1.690 of the voluntary relinquishment of recognition of an accreditation body. The notice will describe the effect, if any, on any third-party auditor/certification body it accredited and on any food or facility certifications such auditor/certification body issued under this subpart.

§ 1.636 How do I request reinstatement of recognition?

(a) *Application following revocation.* An accreditation body that has had its recognition revoked may seek reinstatement by submitting a new application for recognition under § 1.630, or may be required to submit such application after a determination in a regulatory hearing under § 1.693 that revocation was appropriate. The accreditation body must submit evidence that the grounds for revocation have been resolved, including evidence addressing the cause or conditions that were the basis for revocation and identifying measures that have been implemented to help ensure that such cause(s) or condition(s) are unlikely to recur.

(b) *Application following relinquishment.* An accreditation body that previously relinquished its recognition under § 1.635 may seek recognition by submitting a new application for recognition under § 1.630.

Accreditation of Third-Party Auditors/Certification Bodies Under This Subpart

§ 1.640 Who is eligible for accreditation?

(a) A foreign government, agency of a foreign government, foreign cooperative, or any other third party may seek accreditation from a recognized accreditation body (or, where direct accreditation is appropriate, FDA) to conduct food safety audits and to issue food and facility certifications to eligible entities under this subpart.

(b) A foreign government or an agency of a foreign government is eligible for accreditation if it can demonstrate that its food safety programs, systems, and standards meet the requirements of §§ 1.641 to 1.645, as specified in FDA model standards on qualifications for accreditation, including legal authority, competency, capacity, conflicts of interest, quality assurance, and records.

(c) A foreign cooperative or other third party is eligible for accreditation if it can demonstrate that the training and qualifications of its audit agents and its internal systems and standards meet the requirements of §§ 1.641 to 1.645, as specified in FDA model standards on qualifications for accreditation, including legal authority, competency, capacity, conflicts of interest, quality assurance, and records.

§ 1.641 What legal authority must a third-party auditor/certification body have to qualify for accreditation?

(a) A third-party auditor/certification body seeking accreditation from a recognized accreditation body or from FDA must demonstrate that it has the authority (as a governmental entity or through contractual rights) to perform such assessments of facilities, their process(es), and food(s) as are necessary to determine compliance with the FD&C Act and with industry standards and practices and to issue certifications where appropriate based on a review of the findings of such assessments. This includes authority to:

(1) Review any relevant records;

(2) Conduct onsite audits of the eligible entity, such as witnessing the performance of a statistically significant number of personnel and other agents conducting audits of food facilities; and

(3) Suspend or withdraw certification for failure to comply with applicable requirements.

(b) A third-party auditor/certification body seeking accreditation must demonstrate that it is capable of exerting any authority necessary to meet the requirements of accreditation in §§ 1.650 to 1.658 and the procedures in §§ 1.660, 1.663, 1.665, 1.666, and 1.670, if accredited.

§ 1.642 What competency and capacity must a third-party auditor/certification body have to qualify for accreditation?

A third-party auditor/certification body seeking accreditation must demonstrate that it has:

(a) The resources necessary to fully implement its audit and certification program, including:

(1) Adequate numbers of personnel and other agents with relevant knowledge, skills, and experience to effectively audit and assess compliance with applicable FDA requirements and industry standards and practices and to issue valid and reliable certifications; and

(2) Adequate financial resources for its operations; and

(b) The competency and capacity to meet the requirements of §§ 1.650 to 1.658 and the procedures in §§ 1.660, 1.663, 1.665, 1.666, and 1.670, if accredited.

§ 1.643 What protections against conflicts of interest must a third-party auditor/certification body have to qualify for accreditation?

A third-party auditor/certification body must demonstrate that it has:

(a) Implemented written measures to protect against conflicts of interest between the auditor/certification body (and its officers, personnel, and other agents) and eligible entities (and their owners and operators) seeking assessment and certification from, or assessed and certified by, such auditor/certification body; and

(b) The capability to meet the conflict of interest requirements in § 1.657, if accredited.

§ 1.644 What quality assurance procedures must a third-party auditor/certification body have to qualify for accreditation?

A third-party auditor/certification body seeking accreditation must demonstrate that it has:

(a) Implemented a written program for monitoring and assessing the performance of its officers, personnel, and other agents involved in auditing and certification activities, including procedures to:

(1) Identify areas in its auditing and certification program or performance that need improvement; and

(2) Quickly execute appropriate corrective actions when problems are found; and

(b) The capability to meet the quality assurance requirements of § 1.655, if accredited.

§ 1.645 What records procedures must a third-party auditor/certification body have to qualify for accreditation?

A third-party auditor/certification body seeking accreditation must demonstrate that it:

(a) Implemented written procedures to establish, control, and retain records (including documents and data) for a period of time necessary to meet its contractual and legal obligations and to provide an adequate basis for assessing its program and performance; and

(b) Is capable of meeting the reporting and notification requirements of § 1.656 and the records requirements of § 1.658, if accredited.

Requirements for Accredited Auditors/Certification Bodies Under This Subpart

§ 1.650 How must an accredited auditor/certification body ensure its audit agents are competent and objective?

(a) An accredited auditor/certification body that uses audit agents to conduct food safety audits must ensure that each such agent meets the following requirements with respect to the scope of its accreditation under this subpart:

(1) Has relevant knowledge and experience that provides an adequate basis for the agent to assess compliance with the FD&C Act and, for consultative audits, industry standards and practices;

(2) Has been determined by the accredited auditor/certification body, through observations of a representative number of audits, to be competent to conduct food safety audits under this subpart;

(3) Participates in annual food safety training under the accredited auditor's/certification body's training plan;

(4) Is in compliance with the conflict of interest requirements of § 1.657 and has no other conflicts of interest with the eligible entity to be audited that might impair the agent's objectivity; and

(5) Agrees to notify its accredited auditor/certification body immediately upon discovering, during a food safety audit, any condition that could cause or contribute to a serious risk to the public health.

(b) In assigning an audit agent to conduct a food safety audit at a particular eligible entity, an accredited auditor/certification body must determine that the agent is qualified to conduct such audit under the criteria established in paragraph (a) of this section and based on the scope and purpose of the audit and the type of facility, its process(es), and food.

(c) An accredited auditor/certification body cannot use an audit agent to conduct a regulatory audit at an eligible entity if such agent conducted a consultative audit or regulatory audit for the same eligible entity in the preceding 13 months, except that such limitation may be waived if the accredited auditor/certification body demonstrates to FDA, under § 1.663, there is insufficient access to accredited auditors/certification bodies in the country or region where the eligible entity is located or in the country of export.

§ 1.651 How must an accredited auditor/certification body conduct a food safety audit of an eligible entity?

(a) *Audit planning.* Before beginning to conduct a food safety audit under this subpart, an accredited auditor/certification body must:

(1) Require the entity seeking an audit to:

(i) Identify the scope and purpose of the food safety audit, including the facility, process(es), or food to be audited; whether the audit is to be conducted as a consultative or regulatory audit, and if a regulatory audit, the type(s) of certification(s) sought; and

(ii) Provide a 30-day operating schedule for such facility that includes information relevant to the scope and purpose of the audit; and

(2) Determine whether the requested audit is within its scope of accreditation.

(b) *Authority to audit.* In arranging a food safety audit with an eligible entity, an accredited auditor/certification body must ensure it has authority, whether contractual or otherwise, to:

(1) Conduct an unannounced audit to verify whether the activities and results of the eligible entity (within the scope of the audit) comply with the applicable requirements of the FD&C Act and, for consultative audits, industry standards and practices;

(2) Access any records and any area of the facility, its process(es), and food of the eligible entity relevant to the scope and purpose of such audit and, where appropriate, to issue food and facility certifications;

(3) Where FDA requires sampling and analysis, use of validated sampling or analytical methodologies and analysis by a laboratory that is accredited, in accordance with the requirements of section 422 of the FD&C Act;

(4) Notify FDA immediately if, at any time during a food safety audit, the accredited auditor/certification body (or its audit agent, where applicable) discovers a condition that could cause or contribute to a serious risk to the public health and provide information required by § 1.656(c);

(5) Prepare reports of consultative audits that contain the elements

specified in § 1.652(a) and, for regulatory audits, prepare reports that contain the elements specified in § 1.652(b) and submit them to FDA and to its accreditation body (where applicable) under § 1.656(a); and

(6) Allow FDA and the recognized accreditation body that accredited such third-party auditor/certification body, if any, to observe any food safety audit for purposes of evaluating the accredited auditor's/certification body's performance under §§ 1.621 and 1.662 or, where appropriate, the recognized accreditation body's performance under §§ 1.622 and 1.633.

(c) *Audit protocols.* An accredited auditor/certification body (or its audit agent, where applicable) must conduct a food safety audit in a manner consistent with the identified scope and purpose of the audit and within the scope of its accreditation.

(1) The audit must be conducted without announcement during the 30-day timeframe identified under paragraph (a)(1)(ii) of this section and must be focused on the highest food safety risk(s) associated with the facility, its process(es), and food within the scope of the audit.

(2) The audit must include records review; an onsite assessment of the facility, its process(es), and the food that results from such process(es); and where appropriate, environmental or product sampling and analysis, using validated procedures (including sample integrity procedures) and analysis performed by a laboratory accredited in accordance with the requirements of section 422 of the FD&C Act. The audit may include any other activities necessary to establish compliance with the FD&C Act.

(3) The audit must be sufficiently rigorous to allow the accredited auditor/certification body to determine whether the entity is in compliance with the FD&C Act at the time of the audit; and for a regulatory audit, whether the entity would be likely to remain in compliance with the applicable requirements of the FD&C Act for at least 12 months following the audit, provided that the facility and its process(es) are properly maintained and implemented.

(4) Audit observations and assessments, including corrective actions, must be documented and must be used to support the findings contained in the audit report required by § 1.652 and maintained as a record of the accredited auditor/certification body under § 1.658.

§ 1.652 What must an accredited auditor/certification body include in food safety audit reports?

(a) *Consultative audits.* An accredited auditor/certification body must prepare a report of a consultative audit, in English, not later than 45 days after completing such audit and must maintain such report under § 1.658. A consultative audit report must include:

(1) The name and address of the facility subject to audit and the name and address of the eligible entity, if different from the facility;

(2) A unique facility identifier, as required by FDA, for the facility and for the eligible entity, if different from the facility;

(3) The names and telephone numbers of the persons responsible for food safety compliance at the facility;

(4) The dates and scope of the audit; and

(5) Any deficiencies observed that require corrective action, the corrective action plan, and the date on which such corrective actions were completed. Such audit report must be maintained as a record under § 1.658 and must be made available to FDA under § 1.361.

(b) *Regulatory audits.* An accredited auditor/certification body must, no later than 45 days after completing a regulatory audit, prepare and submit electronically, in English, to FDA and to its accreditation body (or, in the case of direct accreditation, only to FDA) a report of such regulatory audit that includes the following information:

(1) The identity of the audited facility, including:

(i) The name and address of the facility subject to audit and a unique facility identifier, as required by FDA; and

(ii) Where applicable, the FDA registration number assigned to the facility under subpart H of this part;

(2) The identity of the eligible entity, including the name, address, and unique facility identifier, as required by FDA, of the eligible entity (if different than that of facility);

(3) The dates and scope of the regulatory audit;

(4) The process(es) and food(s) observed during such audit;

(5) The identity of the person(s) responsible for the facility's compliance with the applicable requirements of the FD&C Act;

(6) Any deficiencies observed during the audit that present a reasonable probability that the use of or exposure to a violative product:

(i) Will cause serious adverse health consequences or death; or

(ii) May cause temporary or medically reversible adverse health consequences or where the probability of serious adverse health consequences is remote;

(7) The corrective action plan for addressing each deficiency identified under paragraph (b)(6) of this section, unless corrective action was implemented immediately and verified onsite by the accredited auditor/certification body (or its audit agent);

(8) Whether any sampling and laboratory analysis (e.g., under a microbiological sampling plan) is used in the facility;

(9) Whether the entity has issued a food safety-related recall of an article of food from the facility during the 2 years preceding the audit and, if so, any such article(s) recalled and the reason(s) for the recall(s);

(10) Whether the entity has made significant changes to the facility, its process(es), or products during the 2 years preceding the audit; and

(11) Any food or facility certifications issued to the entity during the 2 years preceding the audit, including the scope and duration of each such certification.

(c) *Submission of regulatory audit report.* An accredited auditor/certification body must submit a completed regulatory audit report as required by paragraph (b) of this section, regardless of whether the food or facility certification was issued under this subpart.

(d) *Appeals of adverse regulatory audit results.* An accredited auditor/certification body must implement written procedures for receiving and addressing appeals from eligible entities challenging adverse regulatory audit results and for investigating and deciding on appeals in a fair and meaningful manner. The appeals procedures must provide similar protections to those offered by FDA under §§ 1.692 and 1.693, including requirements to:

(1) Make the appeals procedures publicly available;

(2) Use qualified persons, different from those involved in the subject of the appeal, to investigate and decide on an appeal;

(3) Advise the eligible entity of the final decision on its appeal; and

(4) Maintain records under § 1.658 of the appeal, the final decision, and the basis for such decision.

§ 1.653 What must accredited auditor/certification body do when issuing food or facility certifications?

(a) *Basis for issuance of a food or facility certification.* (1) Prior to issuing a food or facility certification to an eligible entity, an accredited auditor/certification body (or an audit agent on its behalf) must complete a regulatory

audit that meets the requirements of § 1.651 and any other activities that may be necessary to establish compliance with applicable requirements of the FD&C Act.

(2) If, as a result of an observation during a regulatory audit, an eligible entity must implement a corrective action plan to address an observation, an accredited auditor/certification body may not issue a food or facility certification to such entity until after the accredited auditor/certification body verifies that eligible entity has implemented the corrective action plan through onsite observation, except for corrective actions taken to address recordkeeping deficiencies that may be verified through submission of records or through assurances by the eligible entity.

(3) An accredited auditor/certification body must consider each observation and assessment made during a regulatory audit and other activities conducted under § 1.651 to determine whether the entity was in compliance with the applicable requirements of the FD&C Act at the time of the audit and whether the entity would be likely to remain in compliance for the duration of a food or facility certification issued under this subpart.

(4) A single regulatory audit may result in issuance of one or more food or facility certifications under this subpart, provided that the requirements of issuance are met as to each such certification.

(5) Where an accredited auditor/certification body uses an audit agent to conduct a regulatory audit of an eligible entity under this subpart, the accredited auditor/certification body (and not the audit agent) must make the determination whether to issue a food or facility certification based on the results of such regulatory audit.

(b) *Issuance of a food or facility certification and submission to FDA.* (1) For purposes of submission to FDA under this subpart, an accredited auditor/certification body must issue a food or facility certification electronically and in English. The accredited auditor/certification body must not issue a food or facility certification under this subpart for a term that is longer than 12 months.

(2) A food or facility certification must contain, at a minimum, the following elements:

(i) The name and address of the accredited auditor/certification body and the scope and date of its accreditation under this subpart;

(ii) The name, address, and unique facility identifier, as required by FDA, of the eligible entity to which the food or facility certification was issued;

(iii) The name, address, and unique facility identifier, as required by FDA, of the facility where the audit was conducted, if different than the eligible entity;

(iv) The scope and date(s) of the audit;

(v) The name of the audit agent(s) (where applicable) conducting the audit;

(vi) The scope of the food or facility certification, date of issuance, and date of expiration.

(3) FDA may refuse to accept any food certification or other assurance for food issued by an accredited auditor/certification body for purposes of section 801(q) of the FD&C Act, if FDA determines, under section 801(q)(4)(B), that such food certification or assurance was not validly issued or does not reliably demonstrate that the food is in compliance with the applicable requirements of the FD&C Act, including the following:

(i) That the food certification or assurance is offered in support of the admissibility of a food that was not within the scope of the certification or assurance; and

(ii) That the food certification was issued by an accredited auditor/certification body acting outside the scope of its accreditation under this subpart.

§ 1.654 When must an accredited auditor/certification body monitor an eligible entity with food or facility certification?

If an accredited auditor/certification body has reason to believe that an eligible entity to which it issued a food or facility certification may no longer be in compliance with the applicable requirements of the FD&C Act, the accredited auditor/certification body must conduct any monitoring (including an onsite assessment) of such eligible entity necessary to determine whether the entity is in compliance. The accredited auditor/certification body must immediately notify FDA, under § 1.656(d), if it determines the entity is no longer in compliance with the applicable requirements of the FD&C Act. The accredited auditor/certification body must maintain records of such monitoring under § 1.658.

§ 1.655 How must an accredited auditor/certification body monitor its own performance?

(a) An accredited auditor/certification body must annually, and as required under § 1.634(d)(1)(i) or upon FDA request made for cause, conduct a self-assessment that includes evaluation of:

(1) The performance of its officers, personnel, or other agents in activities under this subpart, including assessing whether its audit agents focused on the most significant risks to human and/or animal health when conducting food safety audits of facilities involved in the production, manufacturing, processing, packing, or holding of food;

(2) The degree of consistency among its officers, personnel, or other agents in performing activities under this subpart, including assessing whether its audit agents interpreted audit protocols in a consistent manner;

(3) The compliance of the accredited auditor/certification body and its officers, personnel, and other agents, with the conflict of interest requirements of § 1.657;

(4) Actions taken in response to the results of any assessments conducted by FDA or, where applicable, the recognized accreditation body under § 1.621; and

(5) As requested by FDA, any other aspects of its performance relevant to a determination whether the accredited auditor/certification body is in compliance with this subpart.

(b) As a means to evaluate its performance, the accredited auditor/certification body may evaluate the compliance of one or more of eligible entities to which food or facility certification was issued under this subpart.

(c) Based on the evaluations conducted under paragraphs (a) and (b) of this section, the accredited auditor/certification body must:

(1) Identify any area(s) needing improvement;

(2) Quickly implement effective corrective action(s) to address those area(s); and

(3) Under § 1.658, establish and maintain records of such corrective action(s).

(d) The accredited auditor/certification body must prepare a written report, in English, of the results of its self-assessment that includes:

(1) A description of any corrective action(s) taken under paragraph (c) of this section;

(2) A statement disclosing the extent to which the accredited auditor/certification body, and its officers, personnel, and other agents complied with the conflict of interest requirements in § 1.657; and

(3) A statement attesting to the extent to which the accredited auditor/certification body complied with the applicable requirements of this subpart.

§ 1.656 What reports and notifications must an accredited auditor/certification body submit?

(a) *Reporting results of regulatory audits.* An accredited auditor/

certification body must submit a regulatory audit report, as described in § 1.652(b), electronically, in English, to FDA and to the accreditation body that granted its accreditation (where applicable), no later than 45 days after completing such audit.

(b) *Reporting results of accredited auditor/certification body self-assessments.* An accredited auditor/certification body must submit the report of its annual self-assessment required by § 1.655 electronically to its accreditation body (or, in the case of direct accreditation, FDA), within 45 days of the anniversary date of its accreditation under this subpart and, for an accredited auditor/certification body subject to § 1.634(d)(1)(i) or an FDA request for cause, must submit the report of its self-assessment to FDA within 2 months. Such report must include an up-to-date list of any audit agents it uses to conduct audits under this subpart.

(c) *Notification to FDA of a serious risk to public health.* An accredited auditor/certification body must immediately notify FDA electronically, in English, when any of its audit agents or the accredited auditor/certification body itself, discovers any condition, found during a regulatory or consultative audit of an eligible entity, which could cause or contribute to a serious risk to the public health, providing the following information:

(1) The name and address of the eligible entity subject to the audit;

(2) The name and address of the facility where the condition was discovered (if different from that of the eligible entity) and, where applicable, the FDA registration number assigned to the facility under subpart H of this part; and

(3) The condition for which notification is submitted.

(d) *Immediate notification to FDA of withdrawal or suspension of food or facility certification.* An accredited auditor/certification body must notify FDA electronically, in English, immediately upon withdrawing or suspending the food or facility certification of an eligible entity and the basis for such action.

(e) *Notification to its accreditation body or an eligible entity.* (1) After notifying FDA under paragraph (c) of this section, an accredited auditor/certification body must immediately notify the eligible entity of such condition and must immediately thereafter notify the accreditation body that granted its accreditation, except for auditors/certification bodies directly accredited by FDA.

(2) An accredited auditor/certification body must notify its accreditation body (or, in the case of direct accreditation, FDA) electronically, in English, within 30 days after making any significant change that would affect the manner in which it complies with the requirements of §§ 1.640 to 1.658, and must include with such notification the following information:

(i) A description of the change; and

(ii) An explanation for the purpose of the change.

§ 1.657 How must an accredited auditor/certification body protect against conflicts of interest?

(a) An accredited auditor/certification body must implement a written program to protect against conflicts of interest between the accredited auditor/certification body (and its officers, personnel, and agents) and an eligible entity seeking a food safety audit or food or facility certification from, or audited or certified by, such accredited auditor/certification body, including the following:

(1) Ensuring that the accredited auditor/certification body and its officers, personnel, or agents (other than audit agents subject to paragraph (a)(2) of this section) do not own or have a financial interest in, manage, or otherwise control an eligible entity to be certified, or any affiliate, parent, or subsidiary of the entity;

(2) Ensuring that an audit agent of the accredited auditor/certification body does not own or operate an eligible entity, or any affiliate, parent, or subsidiary of the entity, to be subject to consultative or regulatory audit by such agent; and

(3) Prohibiting an officer, employee, or other agent of the accredited auditor/certification body from accepting any money, gift, gratuity, or item of value from the eligible entity to be audited or certified under this subpart.

(4) The items specified in paragraph (a)(3) of this section do not include:

(i) Money representing payment of fees for accreditation services and reimbursement of direct costs associated with an onsite audit or assessment of the third-party auditor/certification body; or

(ii) Meals, of de minimis value, provided on the premises where the audit or assessment is conducted.

(b) An accredited auditor/certification body may accept the payment of fees for auditing and certification services and the reimbursement of direct costs associated with an audit of an eligible entity only after the date on which the report of such audit was completed or the date a food or facility certification was issued, whichever is later. Such payment is not considered a conflict of interest for purposes of paragraph (a) of this section.

(c) The financial interests of the spouses and children younger than 18 years of age of officers, personnel, and other agents of an accredited auditor/certification body will be considered the financial interests of such officers, personnel, and other agents of the accredited auditor/certification body for purposes of this subpart.

(d) An accredited auditor/certification body must maintain on its Web site an up-to-date list of the eligible entities to which it has issued food or facility certifications under this subpart. For each such eligible entity, the Web site also must identify the duration and scope of the food or facility certification and date(s) on which the eligible entity paid the accredited auditor/certification body any fee or reimbursement associated with such audit or certification.

§ 1.658 What records requirements must an accredited auditor/certification body meet?

(a) An accredited auditor/certification body must maintain electronically for 4 years records (including documents and data), in English, that document compliance with this subpart, including:

(1) Any audit report and other documents resulting from a consultative audit conducted under this subpart, including the audit agent's observations, laboratory testing records and results (as applicable), correspondence with the eligible entity, and corrective actions to address deficiencies identified during the audit;

(2) Any request for a regulatory audit from an eligible entity;

(3) Any audit report and other documents resulting from a regulatory audit conducted under this subpart, including the audit agent's observations, laboratory testing records and results (as applicable), correspondence with the eligible entity, and corrective actions to address deficiencies identified during the audit;

(4) Any notification submitted by an audit agent to the accredited auditor/certification body under § 1.650(a)(5) or by the accredited auditor/certification body to FDA under § 1.656(c);

(5) Any food or facility certification issued under this subpart;

(6) Any challenge to an adverse regulatory audit decision and the disposition of the challenge;

(7) Any monitoring it conducted of an eligible entity to which food or facility certification was issued;

(8) Its self-assessments and corrective actions taken as a result; and

(9) Significant changes to the auditing or certification program that might affect compliance with this subpart.

(b) An accredited auditor/certification body must make the records of a consultative audit required by paragraph (a)(1) of this section available to FDA in accordance with the requirements of subpart J of this chapter.

(c) An accredited auditor/certification body must make the records required by paragraphs (a)(2) to (a)(9) of this section available for inspection and copying promptly upon written request of an authorized FDA officer or employee at the place of business of the auditor/certification body or at a reasonably accessible location. If such records are requested by FDA electronically, the records must be submitted electronically, in English, not later than 10 business days after the date of the request.

Procedures for Accreditation of Third-Party Auditors/Certification Bodies Under This Subpart

§ 1.660 Where do I apply for accreditation or renewal of accreditation by a recognized accreditation body?

Except as allowed under § 1.670, a third-party auditor/certification body seeking accreditation must submit its request for accreditation or renewal of accreditation to an accreditation body recognized by FDA under this subpart and identified on the Web site described in § 1.690.

§ 1.661 What is the duration of accreditation?

A recognized accreditation body may grant accreditation to a third-party auditor/certification body under this subpart for a period not to exceed 4 years.

§ 1.662 How will FDA monitor accredited auditors/certification bodies?

(a) FDA will periodically evaluate the performance of each auditor/certification body accredited under this subpart to determine whether the accredited auditor/certification body continues to comply with the requirements of §§ 1.640 to 1.658 and whether there are deficiencies in the performance of the accredited auditor/certification body that, if not corrected, would warrant withdrawal of its accreditation under this subpart. FDA will evaluate each directly accredited auditor/certification body annually. FDA will evaluate an accredited auditor/certification body annually evaluated by a recognized accreditation body under § 1.621 by not later than 3 years after the date of accreditation for a 4-year term of accreditation, or by no later than the mid-term point for accreditation granted for less than 4 years. FDA may conduct additional performance evaluations of an accredited auditor/certification body at any time.

(b) In evaluating the performance of an accredited auditor/certification body under paragraph (a) of this section, FDA may review any one or more of the following:

(1) Regulatory audit reports and food and facility certifications;

(2) The accredited auditor's/certification body's annual self-assessments under § 1.655;

(3) Reports of assessments by a recognized accreditation body under § 1.621, where applicable;

(4) Documents and other information regarding the accredited auditor's/certification body's authority, qualifications (including the expertise and training of its audit agents), conflict of interest program, internal quality assurance program, and monitoring by its accreditation body (or, in the case of direct accreditation, FDA); and

(5) Information obtained by FDA, including during inspections, audits, onsite observations, or investigations, of one or more eligible entities to which food or facility certification was issued by such accredited auditor/certification body.

(c) FDA may conduct its evaluation of an accredited auditor/certification body through onsite observations of performance during a food safety audit of an eligible entity or through document review.

§ 1.663 How do I request an FDA waiver or waiver extension for the 13-month limit for audit agents conducting regulatory audits?

(a) An accredited auditor/certification body may submit a request to FDA to waive the requirements of § 1.650(c) preventing an audit agent from conducting a regulatory audit of an eligible entity if the agent has conducted a food safety audit of such entity during the previous 13 months. The auditor/certification body seeking a waiver or waiver extension must demonstrate there is insufficient access to accredited auditors/certification bodies in the country or region where the eligible entity is located.

(b) Requests for a waiver or waiver extension and all documents provided in support of the request must be submitted to FDA electronically, in English. The requestor must provide such translation and interpretation services as are needed by FDA to process the request.

(c) The request must be signed by the requestor or by any individual authorized to act on behalf of the requestor for purposes of seeking such waiver or waiver extension.

(d) FDA will review requests for waivers and waiver extensions on a first in, first out basis according to the date on which the submission was completed. FDA will evaluate any completed waiver request to determine whether the criteria for waiver have been met.

(e) FDA will notify the requestor, in writing, whether the request for a waiver or waiver extension is approved or denied. Such notification may be made electronically.

(f) If FDA approves the request, the notification will state the duration of the waiver and list any conditions associated with it. If FDA denies the request, the notification will state the basis for denial and will provide the address and procedures for requesting reconsideration of the request under § 1.691.

(g) Unless FDA notifies a requestor that its waiver request has been approved, an accredited auditor/certification body must not use the agent to conduct a regulatory audit of such eligible entity until the 13-month limit in § 1.650(a) has elapsed.

§ 1.664 When can FDA withdraw accreditation?

(a) *Mandatory withdrawal.* FDA will withdraw accreditation from an auditor/certification body:

(1) Except as provided in paragraph (b) of this section, if the food or facility certified under this subpart is linked to an outbreak of foodborne illness that has a reasonable probability of causing serious adverse health consequences or death in humans or animals;

(2) Following an evaluation and finding by FDA that the auditor/certification body no longer meets the requirements for accreditation; or

(3) Following its refusal to allow FDA to access records under § 1.658 or to conduct an audit, assessment, or investigation necessary to ensure continued compliance with this subpart.

(b) *Exception.* FDA may waive mandatory withdrawal under paragraph (a)(1) of this section, if FDA:

(1) Conducts an investigation of the material facts related to the outbreak of human or animal illness;

(2) Reviews the steps or actions taken by the accredited auditor/certification body to justify the food or facility certification; and

(3) Determines that the accredited auditor/certification body satisfied the

requirements for issuance of certification under sections 801(q) or 806 of the FD&C Act, as applicable, and under this subpart.

(c) *Discretionary withdrawal.* FDA may withdraw accreditation from an auditor/certification body when such auditor/certification body is accredited by an accreditation body for which recognition is revoked under § 1.634, if FDA determines there is good cause for withdrawal, including:

(1) Demonstrated bias or lack of objectivity when conducting activities under this subpart; or

(2) Performance that calls into question the validity or reliability of its food safety audits and food and facility certifications.

(d) *Records access.* FDA may request records of the accredited auditor/certification body under § 1.658 and, where applicable, may request records of the recognized accreditation body under § 1.625, when considering withdrawal under paragraphs (a)(1), (a)(2), or (c) of this section.

(e) *Notice to the auditor/certification body of withdrawal of accreditation.* (1) FDA will notify the auditor/certification body of the withdrawal electronically, in English, stating the grounds for withdrawal, the procedures for requesting a regulatory hearing under § 1.693 on the withdrawal, and the procedures for requesting reaccreditation under § 1.666.

(2) Within 10 business days of the date of withdrawal, the auditor/certification body must notify FDA electronically, in English, of the location where the records will be maintained as required by § 1.658.

(f) *Effect of withdrawal of accreditation on eligible entities.* A food or facility certification issued by third-party auditor/certification body prior to withdrawal will remain in effect until the certification terminates by expiration. If FDA has reason to believe that a food certification issued for purposes of section 801(q) of the FD&C Act is not valid or reliable, FDA may refuse to consider the certification in determining the admissibility of the article of food for which the certification was offered.

(g) *Effect of withdrawal of accreditation on recognized accreditation bodies.* (1) FDA will notify a recognized accreditation body, electronically and in English, if the accreditation of one of its auditors/certification bodies is withdrawn. Such accreditation body's recognition will remain in effect if, no later than 2 months after withdrawal, the accreditation body conducts a self-assessment under § 1.622 and reports the results of the self-assessment to FDA as required by § 1.623(b).

(2) FDA may revoke the recognition of such accreditation body whenever FDA determines there is good cause for revocation of recognition under § 1.634.

(h) *Public notice of withdrawal and the status of recognition and food and facility certifications.* FDA will provide notice on the Web site described in § 1.690 of its withdrawal of accreditation of an auditor/certification body under this subpart.

§ 1.665 How do I voluntarily relinquish accreditation?

(a) An accredited auditor/certification body that decides to relinquish accreditation before it terminates by expiration must notify the accreditation body (where applicable) and must notify FDA electronically, in English, at least 6 months before relinquishing such authority. The notice must identify the location where the records will be maintained as required by § 1.658. A third-party auditor/certification body waives the right to a hearing when relinquishing its accreditation under this subpart.

(b) No later than 15 business days after notifying FDA under paragraph (a) of this section, the accredited auditor/certification body must notify any eligible entity to which it issued food or facility certification under this subpart.

(c) A food or facility certification issued by an accredited auditor/certification body prior to relinquishing its accreditation will remain in effect until terminated by expiration. If FDA has reason to believe that a certification issued for purposes of section 801(q) of the FD&C Act is not valid or reliable, FDA may refuse to consider the certification in determining the admissibility of the article of food for which the certification was offered.

(d) FDA will provide notice on the Web site described in § 1.690 of the voluntary relinquishment of accreditation by an auditor/certification body.

§ 1.666 How do I request reaccreditation?

(a) *Application following withdrawal.* FDA will reinstate the accreditation of an auditor/certification body for which it has withdrawn accreditation:

(1) If, in the case of direct accreditation, FDA determines, based on evidence presented by the auditor/certification body, that the auditor/certification body satisfies the requirements for accreditation and adequate grounds for withdrawal no longer exist; or

(2) In the case of an auditor/certification body accredited by an accreditation body for which recognition has been revoked under § 1.634:

(i) If the auditor/certification body becomes accredited by a recognized accreditation body or by FDA through direct accreditation not later than 1 year after withdrawal of accreditation; or

(ii) Under such conditions as FDA may impose in withdrawing accreditation.

(b) *Application following relinquishment.* An auditor/certification body that previously relinquished its accreditation under § 1.665 may seek accreditation by submitting a new application for accreditation under § 1.660 or, where applicable, § 1.670.

Additional Procedures for Direct Accreditation of Third-Party Auditors/Certification Bodies Under This Subpart

§ 1.670 How do I apply to FDA for direct accreditation or renewal of direct accreditation?

(a) *Eligibility.* (1) FDA will accept applications from third-party auditors/certification bodies for direct accreditation or renewal of direct accreditation only if FDA determines that it has not identified and recognized an accreditation body to meet the requirements of section 808 of the FD&C Act within 2 years after establishing the accredited third-party audits and certification program. Such FDA determination may apply, as appropriate, to specific types of auditor/certification bodies, types of expertise, or geographic location; or through identification by FDA of any requirements of section 808 of the FD&C Act not otherwise met by previously recognized accreditation bodies. FDA will only accept applications for direct accreditation and renewal applications that are within the scope of the determination.

(2) FDA may revoke or modify a determination under paragraph (a)(1) of this section if FDA subsequently identifies and recognizes an accreditation body that affects such determination.

(3) FDA will provide notice on the Web site described in § 1.690 of a determination under paragraph (a)(1) of this section and of a revocation or modification of the determination under paragraph (a)(2) of this section.

(b) *Application for direct accreditation or renewal of direct accreditation.* (1) An auditor/certification body seeking direct accreditation or renewal of direct accreditation must submit an application to FDA, demonstrating that it is within the scope of the

determination issued under paragraph (a) of this section, and it meets the eligibility requirements of § 1.640.

(2) Applications and all documents provided as part of the application process must be submitted electronically, in English. An applicant must provide such translation and interpretation services as are needed by FDA to process the application, including during an onsite audit of the applicant.

(3) The application must be signed by the applicant or by any individual authorized to act on behalf of the applicant for purposes of seeking or renewing direct accreditation.

§ 1.671 How will FDA review applications for direct accreditation and for renewal of direct accreditation?

(a) FDA will review applications for direct accreditation and for renewal of direct accreditation on a first in, first out basis according to the date the submission was completed.

(b) FDA will evaluate any completed application to determine whether the applicant meets the requirements for direct accreditation under this subpart.

(c) FDA will notify the applicant in writing whether the application has been approved or denied. FDA may provide such notification electronically.

(d) If an application has been approved, the notification will list any conditions associated with the accreditation.

(e) If FDA denies an application, the notification will state the basis of denial and will provide the address and procedures for requesting reconsideration of the application under § 1.691.

(f) If FDA does not reach a final decision on a renewal application before the expiration of its direct accreditation, FDA may extend the duration of such direct accreditation for a specified period of time or until the agency reaches a final decision on the renewal application.

§ 1.672 What is the duration of direct accreditation?

FDA will grant direct accreditation of a third-party auditor/certification body for a period not to exceed 4 years.

Requirements for Eligible Entities Under This Subpart

§ 1.680 How and when will FDA monitor eligible entities?

(a) FDA may, at any time, conduct an onsite audit of an eligible entity that has received food or facility certification from an accredited auditor/certification body under this subpart. The audit may be conducted with or without the accredited auditor/certification body or the recognized accreditation body (where applicable) present.

(b) A food safety audit conducted by an accredited auditor/certification body under this subpart is not considered an inspection under section 704 of the FD&C Act.

§ 1.681 How frequently must eligible entities be recertified?

(a) An eligible entity seeking to maintain facility certification under this subpart must seek recertification prior to expiration of its certification. To obtain recertification, the eligible entity must demonstrate its continuing compliance with the applicable requirements of the FD&C Act.

(b) FDA may require an eligible entity to renew a food certification at any time FDA determines appropriate under section 801(q)(4)(A) of the FD&C Act.

General Requirements of This Subpart

§ 1.690 How will FDA make information about recognized accreditation bodies and accredited auditors/certification bodies available to the public?

FDA will place on its Web site a registry of recognized accreditation bodies and accredited auditors/certification bodies, including the name and contact information for each. The registry may provide information on auditors/certification bodies accredited by recognized accreditation bodies through links to the Web sites of such accreditation bodies.

§ 1.691 How do I request reconsideration of a denial by FDA of an application or a waiver request?

(a) An accreditation body may seek reconsideration of the denial of an application for recognition, renewal of recognition, or reinstatement of recognition no later than 10 business days after the date of such decision.

(b) A third-party auditor/certification body may seek reconsideration of the denial of an application for direct accreditation, renewal of direct accreditation, reinstatement of direct accreditation, a request for a waiver of the conflict of interest requirement in § 1.650(b), or a waiver extension no later than 10 business days after the date of such decision.

(c) A request to reconsider an application or waiver request under paragraph (a) or (b) of this section must be signed by the requestor or by an individual authorized to act on its behalf in submitting the request for reconsideration. The request must be submitted in English to the address specified in the notice of denial and must comply with the procedures it describes.

(d) After completing its review and evaluation of the request for reconsideration, FDA will notify the requestor, in writing, of its decision to grant the application or waiver request upon reconsideration, or its decision to deny the application or waiver request upon reconsideration.

§ 1.692 How do I request internal agency review of a denial of an application or waiver request upon reconsideration?

(a) No later than 10 business days after the date FDA issued a denial of an application or waiver request upon reconsideration under § 1.691, the requestor may seek internal agency review of such denial under § 10.75(c)(1) of this chapter.

(b) The request for internal agency review under paragraph (a) of this section must be signed by the requestor or by an individual authorized to act on its behalf in submitting the request for internal review. The request must be submitted in English to the address specified in the letter of denial upon reconsideration and must comply with procedures it describes.

(c) Under § 10.75(d) of this chapter, internal agency review of such denial must be based on the information in the administrative file, which will include any supporting information submitted under § 1.691(c).

(d) After completing the review and evaluation of the administrative file, FDA will notify the requestor, electronically, of its decision to overturn the denial and grant the application or waiver request or to affirm the denial of the application or waiver request upon reconsideration.

(e) Affirmation by FDA of a denial of an application or waiver request upon reconsideration constitutes final agency action under 5 U.S.C. 702.

§ 1.693 How do I request a regulatory hearing on a revocation of recognition or withdrawal of accreditation?

(a) *Request for hearing on revocation.* No later than 10 business days after the date FDA issued a revocation of recognition of an accreditation body under § 1.634, the accreditation body or an individual authorized to act on its behalf may submit a request for a regulatory hearing on the revocation under part 16 of this chapter. The written notice of revocation issued under § 1.634 will contain all of the elements required by § 16.22 of this chapter and will thereby constitute the notice of an opportunity for hearing under part 16 of this chapter.

(b) *Request for hearing on withdrawal.* No later than 10 business days after the date FDA issued a withdrawal of

accreditation of a third-party auditor/certification body under § 1.664, the auditor/certification body or an individual authorized to act on its behalf may submit a request for a regulatory hearing on the withdrawal under part 16 of this chapter. The written notice of withdrawal under § 1.664 will contain all of the elements required by § 16.22 of this chapter and will thereby constitute the notice of opportunity of hearing under part 16 of this chapter.

(c) *Submission of request for regulatory hearing.* The request for a regulatory hearing under paragraph (a) or (b) of this section must be submitted with a written appeal that responds to the basis for the FDA decision, as described in the written notice of revocation or withdrawal, as appropriate, and includes any supporting information upon which the requestor is relying. The request, appeal, and supporting information must be submitted in English to the address specified in the notice and must comply with the procedures it describes.

(d) *Effect of submission of request on FDA decision.* The submission of a request for a regulatory hearing under paragraph (a) or (b) of this section will not operate to delay or stay the effect of a decision by FDA to revoke recognition of an accreditation body or to withdraw accreditation of an auditor/certification body unless FDA determines that a delay or a stay is in the public interest.

(e) *Presiding officer.* The presiding officer for a regulatory hearing for a revocation or withdrawal under this subpart will be designated after a request for a regulatory hearing is submitted to FDA.

(f) *Denial of a request for regulatory hearing.* The presiding officer may deny a request for regulatory hearing for a revocation or withdrawal under § 16.26(a) of this chapter.

(g) *Conduct of regulatory hearing.* (1) If the presiding officer grants a request for a regulatory hearing for a revocation or withdrawal, the hearing will be held within 10 business days after the date the request was filed or, if applicable, within a timeframe agreed upon in writing by requestor, the presiding officer, and FDA.

(2) The presiding officer may require that a regulatory hearing for a revocation or withdrawal be completed within 1 business day, as appropriate.

(3) The presiding officer must conduct the regulatory hearing for revocation or withdrawal under part 16 of this chapter, except that, under § 16.5 of this chapter, such procedures apply only to the extent that the procedures are supplementary and do not conflict with the procedures specified for regulatory hearings under this subpart. Accordingly, the following requirements are inapplicable to regulatory hearings under this subpart: The requirements of § 16.22 (Initiation of a regulatory hearing); § 16.24(e) (timing) and (f) (contents of notice); § 16.40 (Commissioner); § 16.95(b) (administrative decision and record for decision) and § 16.119 (Reconsideration and stay of action) of this chapter.

(4) A decision by the presiding officer to affirm the revocation of recognition or the withdrawal of accreditation is considered a final agency action under 5 U.S.C. 702.

Audits for Other Purposes

§ 1.698 May importers use reports of regulatory audits by accredited auditors/certification bodies for purposes of subpart L of this part?

An importer, as defined in § 1.500 of this part, may use a regulatory audit of an eligible entity, documented in a regulatory audit report, in meeting requirements for an onsite audit of a foreign supplier under subpart L of this part.

PART 16—REGULATORY HEARING BEFORE THE FOOD AND DRUG ADMINISTRATION

■ 3. The authority citation for 21 CFR part 16 continues to read as follows:

Authority: 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–394, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201–262, 263b, 364.

■ 4. Section 16.1 is amended by numerically adding the following entry in paragraph (b)(2) to read as follows:

§ 16.1 Scope.

* * * * *

(b) * * *

(2) * * *

§§ 1.634 and 1.664, relating to revocation of recognition of an accreditation body and withdrawal of accreditation of auditors/certification bodies that conduct food safety audits of eligible entities in the food import supply chain and issue food and facility certifications.

* * * * *

Dated: July 23, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–17994 Filed 7–26–13; 8:45 am]

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H.R. 2289/P.L. 113–22
To rename section 219(c) of the Internal Revenue Code of 1986 as the Kay Bailey Hutchison Spousal IRA. (July 25, 2013; 127 Stat. 492)
Last List July 23, 2013

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