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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, November 9, 2010
9 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 75, No. 209
Friday, October 29, 2010

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2008–0016]

RIN 0579–AD15

Importation of Mexican Hass Avocados; Additional Shipping Options

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations for the importation of Hass avocados originating in Michoacán, Mexico, into the United States by adding the option to ship avocados to the United States in bulk shipping bins when safeguarding is maintained from the packinghouse to the port of first arrival in the United States and by making it clear that the avocados may be shipped by land, sea, or air. We are also amending the regulations to allow avocados from multiple packinghouses that participate in the avocado export program to be combined into one consignment. We are taking these actions in response to requests from the Government of Mexico and inquiries from a U.S. maritime port. These actions will allow additional options for shipping Hass avocados from Mexico to the United States and allow Mexican exporters to ship full container or truck loads from multiple packinghouses while continuing to provide an appropriate level of protection against the introduction of plant pests.

DATES: *Effective Date:* November 29, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. David B. Lamb, Import Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 734–0627.

SUPPLEMENTARY INFORMATION:

Background

The regulations in "Subpart—Fruits and Vegetables" (7 CFR 319.56–1 through 319.56–50) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests, including fruit flies, that are new to or not widely distributed within the United States.

Under the regulations in § 319.56–30 (referred to below as the regulations), fresh Hass avocado fruit grown in approved orchards in approved municipalities in Michoacan, Mexico, may be imported into specified areas of the United States after meeting the requirements of a systems approach. The systems approach, which is described in the regulations, includes surveys for pathway pests in municipalities and orchards; municipality, orchard, and packinghouse certification; protection of harvested fruit from infestation; shipment in sealed, refrigerated trucks or containers; and the cutting and inspection of fruit in orchards, in packinghouses, and at ports of entry. The overlap of the phytosanitary measures helps ensure the effectiveness of the systems approach.

On May 27, 2010, we published in the **Federal Register** (75 FR 29680–29684, Docket No. APHIS–2008–0016) a proposal [1] to amend the regulations by adding the option to ship avocados to the United States in bulk shipping bins when safeguarding is maintained from the packinghouse to the port of first arrival in the United States and by making it clear that the avocados may be shipped by land, sea, or air. We also proposed to allow avocados from multiple packinghouses that participate in the avocado export program to be combined into one consignment.

We solicited comments concerning our proposal for 60 days ending July 26, 2010. We received three comments by that date, from the operators of a U.S. maritime port, an association of Mexican Hass avocado producers, packers, and exporters, and a State department of agriculture. Two commenters were in favor of adopting the rule as proposed.

The remaining commenter expressed concern that allowing consignments of avocados from multiple packinghouses might result in difficulties with traceback in the event of a pest introduction.

The regulations require that the boxes or crates must be clearly marked with the identity of the grower, packinghouse, and exporter. We are adding the option to use bulk shipping bins as well as boxes or crates, but we are also continuing to require the identifying markings for boxes, crates, or bins in any consignment of avocados, whether from a single packinghouse or from multiple packinghouses. Furthermore, avocados from multiple packinghouses will not be commingled in the same box, crate, or bulk shipping bin. Instead, the regulations will allow a refrigerated truck or refrigerated shipping container to be loaded with full boxes, crates, or bulk shipping bins from more than one approved packinghouse when phytosanitary safeguarding is maintained. We believe that the existing marking provisions will continue to provide sufficient information to conduct a traceback investigation in the event of a pest introduction. We are making no changes in response to this comment.

Therefore, for the reasons given in the proposed rule, we are adopting the proposed rule as a final rule, without change.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 604, we have performed a final regulatory flexibility analysis, which is summarized below, regarding the economic effects of this rule on small entities. Copies of the full analysis are available on the Regulations.gov Web site (*see* footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Currently, Hass avocado exports from Michoacán, Mexico, are allowed to enter all 50 States throughout the year. Since

[1] To view the proposed rule and the comments we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0016.*

there is no limit to the volume that may be shipped, market forces of supply and demand and the extent to which any maritime shipments are in addition to—rather than in place of—shipments by truck will determine the size of any market effects of the rule. These actions will allow additional options for shipping Hass avocados from Mexico to the United States and allow Mexican exporters to ship full container or truck loads from multiple packinghouses while continuing to provide an appropriate level of protection against the introduction of plant pests.

U.S. producers of avocado are predominantly small entities. Other small entities that theoretically could be affected by the rule include fresh avocado importers, brokers, truck drivers, and maritime shippers. The price and supply impacts that this rule may have on U.S. entities are not known.

Executive Order 12988

This final rule allows Hass avocados to be imported into the United States from Mexico in bulk consignments and in consignments from multiple packinghouses when phytosanitary safeguarding is maintained from the packinghouse to the first port of entry in the United States. State and local laws and regulations regarding Hass avocados imported under this rule will be preempted while the fruit is in foreign commerce. Fresh avocados are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

■ Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Section 319.56–30 is amended as follows:

■ a. In paragraph (c)(3)(v), by removing the words "shipping boxes" and adding the words "containers in which they will be shipped" in their place.

■ b. In paragraph (c)(3)(vi), by removing the words "in boxes" and adding the words "for shipping" in their place.

■ c. By revising paragraphs (c)(3)(vii) and (c)(3)(viii) to read as set forth below.

■ d. By removing paragraphs (f) and (g) and redesignating paragraphs (h) and (i) as paragraphs (f) and (g), respectively.

■ e. In newly redesignated paragraph (g), by adding the words ", crates, or bulk shipping bins" after the words "original shipping boxes" and by removing the words "new boxes" and adding the words "new packaging" in their place.

§ 319.56–30 Hass avocados from Michoacan, Mexico.

* * * * *

(c) * * *

(3) * * *

(vii) The avocados must be packed in clean, new boxes or bulk shipping bins, or in clean plastic reusable crates. The boxes, bins, or crates must be clearly marked with the identity of the grower, packinghouse, and exporter, and with the statement "Not for importation or distribution in Puerto Rico or U.S. Territories." The boxes, bins, or crates must be covered with a lid, insect-proof mesh, or other material to protect the avocados from fruit-fly infestation prior to leaving the packinghouse. Those safeguards must be intact at the time the consignment arrives in the United States.

(viii) The packed avocados must be placed in a refrigerated truck or refrigerated container and remain in that truck or container while in transit through Mexico to the port of export for consignments shipped by air or sea or the port of first arrival in the United States for consignments shipped by land. Prior to leaving the packinghouse, the truck or container must be secured by the Mexican NPPO with a seal that will be broken when the truck or container is opened. The seal may be broken and a new seal applied by the Mexican NPPO if the truck or container stops at another approved packinghouse for additional avocados meeting the requirements of this section to be placed in the truck or container. The seal on the refrigerated truck or refrigerated container must be intact at the time the truck or container reaches the port of export in Mexico or the port of first arrival in the United States.

* * * * *

Done in Washington, DC, this 25th day of October 2010.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–27426 Filed 10–28–10; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket No. R–1377]

Electronic Fund Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending Regulation E, which implements the Electronic Fund Transfer Act, and the official staff commentary to the regulation, in order to implement legislation that modifies the effective date of certain disclosure requirements in the gift card provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009.

DATES: This final rule is effective November 29, 2010.

FOR FURTHER INFORMATION CONTACT: Dana Miller or Mandie Aubrey, Senior Attorneys, Ky Tran-Trong or Vivian Wong, Counsels, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–2412 or (202) 452–3667. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

On May 22, 2009, the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit Card Act) was signed into law.[1] Section 401 of the Credit Card Act amended the Electronic Fund Transfer Act, 15 U.S.C. 1693 *et seq.,* and imposed certain restrictions on a person's ability to impose dormancy, inactivity, or service fees with respect to gift certificates, store gift cards, and general-use prepaid cards. In addition, the Credit Card Act generally prohibited

[1] Public Law 111–24, 123 Stat. 1734 (2009).

the issuance or sale of such products if they expire earlier than five years from the date of issuance of a gift certificate or the date on which funds were last loaded to a store gift card or general-use prepaid card.

Section 403 of the Credit Card Act required that the gift card and related provisions of the Credit Card Act become effective 15 months after enactment, or on August 22, 2010. *See* EFTA Section 915(d)(3). The Board published a final rule implementing the gift card provisions of the Credit Card Act on April 1, 2010 (final gift card rule). 75 FR 16580. As mandated by the Credit Card Act, the final gift card rule has an effective date of August 22, 2010.

On July 27, 2010, Congress passed legislation amending Section 403 of the Credit Card Act to delay the effective date of certain gift card disclosure provisions of the Credit Card Act for certificates or cards produced prior to April 1, 2010 (Gift Card Amendment).[2] The Gift Card Amendment provides a delayed effective date with respect to these provisions in order to permit the sale of card stock produced before that date until January 31, 2011, so long as certain conditions are met, including the provision of in-store disclosures. Moreover, the substantive fee and expiration date protections provided by the Credit Card Act continue to apply to all certificates or cards sold to a consumer on or after August 22, 2010. Due to the time constraints imposed by the August 22, 2010 effective date of the Credit Card Act, the Board issued an interim final rule revising the April 2010 final gift card rule in order to implement the Gift Card Amendment, 75 FR 50683 (Aug. 17, 2010), but stated its intent to consider comments on the interim final rule. The Board is adopting the final rule today.

II. Overview of Public Comment; Summary of Final Rule

The Board received two comments on the interim final rule from a credit union trade association and a bankers' trade association. Both commenters generally supported the interim final rule. The bankers' trade association suggested that the Board exercise its exception authority to eliminate in-store disclosures where cards sold meet the final gift card rule's substantive fee and expiration date protections. This commenter also requested an extension of the delayed effective date. No other comments were received. The final rule adopts the interim final rule as issued, with minor non-substantive edits.

[2] Public Law 111–209, 124 Stat. 2254 (July 27, 2010).

With respect to gift certificates, store gift cards, and general-use prepaid cards produced prior to April 1, 2010, the Gift Card Amendment delayed the effective date of the disclosure requirements in EFTA Sections 915(b)(3) and (c)(2)(B) (as amended by the Credit Card Act) until January 31, 2011, provided that several specified conditions are met. The final rule implements the Gift Card Amendment.

The Gift Card Amendment did not address the status of additional requirements adopted in the Board's final gift card rule that were not contained in the Credit Card Act. As a result, persons seeking to take advantage of the relief afforded by the Gift Card Amendment would have been unable to do so if certain of these additional provisions became effective on August 22, 2010. For example, § 205.20(e)(1) of the final gift card rule prohibits any person from selling or issuing a certificate or card unless the consumer has had a reasonable opportunity to purchase a certificate or card with at least five years remaining until the certificate or card expiration date. Thus, a card produced prior to April 1, 2010 that has a card expiration date of less than five years could not be sold under the final gift card rule, notwithstanding the provisions of the Gift Card Amendment. Therefore, in order to carry out the intended purpose of the Gift Card Amendment, the final rule also delays the effective date of certain of these supplemental requirements.

As in the interim final rule, the final rule revises §§ 205.20(c) and (g) of the final gift card rule ("Form of Disclosures" and "Compliance Dates," respectively) and adds a new § 205.20(h) ("Temporary Exemption").

III. Section-by-Section Analysis

20(c) Form of Disclosures

20(c)(2) Format

To take advantage of the delayed effective date, the Gift Card Amendment requires that certain disclosures be made to the consumer through in-store signage, messages during customer service calls, Web sites, and general advertising. These disclosure requirements are implemented through § 205.20(h)(2) of the final rule, discussed in more detail below.

Section 205.20(c)(2) of the final gift card rule generally requires disclosures to be made in writing or electronically, and in retainable form. The Board believes such requirements are unnecessary with respect to the disclosures required by § 205.20(h)(2). For example, it would be impracticable to provide in-store signage under § 205.20(h)(2) in a retainable form. Moreover, the disclosures required by § 205.20(h)(2) are intended to relieve the burden of replacing non-compliant card stock with card stock bearing disclosures that comply with the final gift card rule, so the Board believes that the format standards in § 205.20(c)(2) are less appropriate in this instance. Commenters supported the Board's stance in this regard.

Section 205.20(c)(2) has been revised to provide that the disclosures required by § 205.20(h)(2) need not be made in a retainable form. For similar reasons, § 205.20(c)(2) is revised to provide that the prior-to-purchase disclosures required by § 205.20(c)(3) need not be provided in a retainable form. Section 205.20(c)(2) has also been revised to make clear that the disclosures required by § 205.20(h)(2) may be provided orally.

20(g) Compliance Dates

20(g)(1) Effective Date for Gift Certificates, Store Gift Cards, and General-Use Prepaid Cards

The final gift card rule became effective August 22, 2010, consistent with the Credit Card Act. Consistent with the interim final rule, to give effect to the delayed effective date set forth in the Gift Card Amendment, the final rule revises § 205.20(g)(1) of the final gift card rule to state that, except as provided in new § 205.20(h), § 205.20 applies to any gift certificate, store gift card, or general-use prepaid card sold to a consumer on or after August 22, 2010, or provided to a consumer as a replacement for such certificate or card.

20(g)(2) Effective Date for Loyalty, Award, or Promotional Gift Cards

Section 205.20(g)(2) of the final gift card rule sets forth a special transition rule for the disclosure requirements applicable to loyalty, award, and promotional gift cards. Specifically, § 205.20(g)(2) provides that the disclosure requirements in § 205.20(a)(4)(iii) apply to any card, code or other device provided to a consumer in connection with a loyalty, award, or promotional program where the period of eligibility for the program begins on or after August 22, 2010. The Gift Card Amendment does not specifically delay the effective date of the disclosures required by § 205.20(a)(4)(iii), and accordingly the effective date for loyalty, award, and promotional cards was unchanged both in the interim final rule and in this final rule.

20(h) Temporary Exemption

20(h)(1) Delayed Effective Date

As discussed above, the Gift Card Amendment delays the effective date of certain disclosure requirements in EFTA Sections 915(b)(3) and (c)(2)(B). Section 205.20(h)(1) implements the delayed effective date. Specifically, § 205.20(h)(1) provides that, for any gift certificate, store gift card, or general-use prepaid card produced prior to April 1, 2010, the effective date of the requirements of paragraphs (c)(3), (d)(2), (e)(1), (e)(3), and (f) of this section is January 31, 2011, provided that an issuer of such certificate or card meets several specified conditions.

One commenter urged the Board to extend the delayed effective date an additional 24 months. By its terms, the Gift Card Amendment permits issuers to sell existing card stock until January 31, 2011, the end of the 2010 holiday season. The Board believes that further extension of the effective date would be inconsistent with the legislation.

Provisions of the Final Gift Card Rule Subject to the Delayed Effective Date

Section 205.20(h)(1) delays the effective dates of §§ 205.20(d)(2) and (e)(3)(i) of the final gift card rule. Section 205.20(d)(2), which implemented EFTA Section 915(b)(3)(A), prohibits the imposition of any dormancy, inactivity, or service fee unless, among other things, certain specified clear and conspicuous disclosures about the fees are made on the certificate or card. Section 205.20(e)(3)(i), which implemented EFTA Section 915(c)(2)(B), requires disclosure of the expiration date for the certificate or card's underlying funds—or the fact that the underlying funds do not expire—on the certificate or card. These disclosure requirements are subject to the delayed effective date under the Gift Card Amendment for certificates or cards produced prior to April 1, 2010.

In addition, § 205.20(h)(1) delays the effective dates of §§ 205.20(e)(1), (e)(3)(ii), (e)(3)(iii), and (f). Section 205.20(e)(1) prohibits the issuance or sale of certificates or cards, unless policies and procedures have been established to ensure that a consumer will have a reasonable opportunity to purchase a certificate or card with at least five years remaining until the certificate or card expiration date. Section 205.20(e)(3)(ii) requires the disclosure on the certificate or card of a toll-free telephone number, and, if one is maintained, a Web site that a consumer may use to obtain a replacement certificate or card after expiration if the underlying funds may be available. Section 205.20(e)(3)(iii) requires certain disclosures on the certificate or card about expiration and replacement cards, except where a non-reloadable certificate or card bears an expiration date that is at least seven years from the date of manufacture. Section 205.20(f) requires additional fee disclosures on or with the certificate or card, and, similar to § 205.20(e)(3)(ii), disclosure on the certificate or card of a toll-free telephone number, and, if one is maintained, a Web site that a consumer may use to obtain fee information. As discussed in more detail in the final gift card rule, these provisions were adopted pursuant to the Board's authority under EFTA Sections 904(a) and 915(d)(2), as amended by the Credit Card Act.

Although not mandated by the Gift Card Amendment, the Board believes that the effective date of §§ 205.20(e)(1), (e)(3)(iii), and (f) should also be delayed in order to carry out the intended purpose of the Gift Card Amendment. For example, some gift cards produced before April 1, 2010 may bear expiration dates of less than five years, which would not comply with § 205.20(e)(1). If the Board did not provide for a delayed effective date with respect to § 205.20(e)(1), issuers would not be permitted to sell this existing card stock, even if issuers otherwise satisfied the statutory prerequisites to qualify for relief under the Gift Card Amendment. Such a result would undermine the purpose of the Gift Card Amendment.

Finally, § 205.20(h)(1) delays the effective date of § 205.20(c)(3). Section 205.20(c)(3) requires that the disclosures required by §§ 205.20(d)(2), (e)(3), and (f)(1) be made prior to purchase. As discussed in more detail in the final gift card rule, § 205.20(c)(3) was adopted pursuant to both the statutory mandate (in EFTA Section 915(c)(3)(B)) and the Board's authority under EFTA Section 904(a). For the reasons discussed above, any disclosures that are required to be provided prior to purchase under § 205.20(c)(3) are subject to the delayed effective date, provided that the issuer complies with the conditions specified in § 205.20(h)(1).

Conditions Imposed

To take advantage of the Gift Card Amendment's delayed effective date, an issuer of the certificate or card must meet several specified conditions. First, the issuer must comply with the other provisions of § 205.20, including the section's substantive restrictions on the imposition of fees. Second, the issuer must not impose an expiration date with respect to the funds underlying such a certificate or card. Third, the issuer must, at the consumer's request and at no cost to the consumer, replace such certificate or card if the certificate or card has funds remaining. Finally, the issuer must satisfy the disclosure requirements of new § 205.20(h)(2), discussed in more detail below. *See* §§ 205.20(h)(1)(i)–(iv).

Comment 20(h)(1)–1 is adopted with minor, non-substantive edits for clarity. Comment 20(h)(1)–1 explains that certificates or cards produced prior to April 1, 2010 may be sold to a consumer for a limited time without satisfying the requirements of § 205.20(c)(3), (d)(2), (e)(1), (e)(3), and (f), provided that issuers of such certificates or cards comply with the additional substantive and disclosure requirements of §§ 205.20(h)(1)(i)–(iv). Issuers of certificates or cards produced prior to April 1, 2010 need not satisfy these additional requirements if the certificates or cards fully comply with the final gift card rule. Thus, if on August 22, 2010 an issuer sells gift cards produced prior to April 1, 2010 that do not have fees and do not expire, and which otherwise comply with the final gift card rule, that issuer would not then be required to make the in-store signage and other disclosures required by § 205.20(h)(2) with respect to those gift cards because those cards satisfy the requirements of the final gift card rule.

Comment 20(h)(1)–2 clarifies when the temporary relief afforded by the Gift Card Amendment expires. This comment explains that certificates or cards produced prior to April 1, 2010 that do not fully comply with the final gift card rule may not be issued or sold to consumers on or after January 31, 2011.

20(h)(2) Additional Disclosures

The Gift Card Amendment imposes certain additional disclosure requirements in order for an issuer to take advantage of the delayed effective date. Section 205.20(h)(2) of the final rule implements these disclosure requirements, largely tracking the language of the statute, and with minor non-substantive edits from the interim final rule for clarity. Specifically, § 205.20(h)(2) provides that issuers relying on the delayed effective date in § 205.20(h)(1) must disclose through in-store signage, messages during customer service calls, Web sites, and general advertising, that: (i) The underlying funds of such certificate or card do not expire; (ii) consumers holding such certificate or card have a right to a free replacement certificate or card, which must be accompanied by the packaging and materials typically associated with

such certificate or card; and (iii) any dormancy, inactivity, or service fee for such certificate or card that might otherwise be charged will not be charged if such fees do not comply with Section 915 of the Electronic Fund Transfer Act.

One commenter requested that the Board exercise its exception authority to eliminate these additional disclosures where the certificate or card meets the final gift card rule's fee limitations and other substantive restrictions. If the Board were to take such an action, consumers could be sold cards that, on their face, contain disclosures that do not reflect the certificate or card's actual terms. In particular, consumers may elect to discard an expired gift card notwithstanding the fact that the underlying funds remain valid after the card expiration, and thus be denied the Credit Card Act's protections. Thus, the Board believes that the disclosures required by the Gift Card Amendment are necessary to alert the consumer about the protections afforded them by the Credit Card Act.

In some cases, issuers may not have direct control over in-store signage and store advertisements. Accordingly, comment 20(h)(2)–1 explains that issuers may make the disclosures required by § 205.20(h)(2) through a third party, such as a retailer or merchant. For example, an issuer may have a merchant install in-store signage with the disclosures required by § 205.20(h)(2) on the issuer's behalf. Comment 20(h)(2)–2 also clarifies that § 205.20(h)(2) does not impose an obligation on an issuer to advertise certificates or cards.

20(h)(3) Expiration of Disclosure Requirements

The Gift Card Amendment requires the additional disclosures to be maintained until January 31, 2013. The Board believes that such a requirement is appropriate with respect to Web sites that a certificate or card recipient may visit and phone numbers that a recipient may call for more information. For example, a gift card recipient may call a customer service phone number printed on the card to obtain more information about the card's fees or terms of expiration. *See* § 205.20(h)(3)(ii).

However, certificates or cards sold on or after January 31, 2011 must comply with §§ 205.20(a)–(f) of the final gift card rule. Because consumers would only be able to purchase cards that are fully compliant with the Credit Card Act from that date forward, consumers purchasing certificates or cards might mistakenly believe that the additional disclosures set forth in the Gift Card Amendment stated in advertisements or in-store signage are applicable to their certificates or cards. Thus, the Board believes that requiring issuers to maintain Gift Card Amendment-related advertisements or in-store signage on or after January 31, 2011 could be confusing and even misleading to consumers because certificates or cards that do not comply with the final gift card rule cannot be issued or sold after that date.

For this reason, the Board is exercising its exception authority in EFTA Section 904(c) to provide that, with respect to in-store signage and general advertising, the disclosure requirements of § 205.20(h)(2) are not required to be provided on or after January 31, 2011. *See* § 205.20(h)(3)(i). Section 904(c) of the EFTA provides that regulations prescribed by the Board may contain any classifications, differentiations, or other provisions, and may provide for such adjustments or exceptions for any class of electronic fund transfers that in the judgment of the Board are necessary or proper to effectuate the purposes of the title, to prevent circumvention or evasion, or to facilitate compliance.

IV. Legal Authority

General Rulemaking Authority

Section 401(d)(1) of the Credit Card Act directs the Board to prescribe rules to carry out the gift card provisions of the Credit Card Act. The Board is exercising its authority under Section 401(d)(1) to implement the provisions of the Credit Card Act as superseded by the Gift Card Amendment with respect to the delayed effective date of the requirements in §§ 205.20(d)(2) and (e)(1)(i), and part of § 205.20(c)(3).

Section 401(d)(2) of the Credit Card Act requires the Board to determine the extent to which the individual definitions and provisions of the EFTA and Regulation E should apply to gift certificates, store gift cards, and general-use prepaid cards. *See* EFTA Section 915(d)(2); 15 U.S.C. 1693m(d)(2). Further, Section 904(a) of the EFTA authorizes the Board to prescribe regulations necessary to carry out the purposes of the title. The express purposes of the EFTA are to establish "the rights, liabilities, and responsibilities of participants in electronic fund transfer systems" and to provide "individual consumer rights." *See* EFTA Section 902(b); 15 U.S.C. 1693. The Board is exercising its authority under EFTA Sections 904(a) and 915(d)(2) for the reasons discussed above to provide for the delayed effective date of the disclosure requirements of §§ 205.20(e)(1), 205.20(e)(3)(ii)–(iii), and 205.20(f), and part of § 205.20(c)(3).

Finally, as discussed above, the Board is exercising its authority under EFTA Section 904(c) to implement § 205.20(h)(3)(i), which clarifies that, with respect to in-store signage and general advertising, the disclosures required by § 205.20(h)(2) are not required to be provided on or after January 31, 2011.

V. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an initial and final regulatory flexibility analysis only when 5 U.S.C. 553 requires publication of a notice of proposed rulemaking. *See* 5 U.S.C. 603(a), 604(a). As discussed in the interim final rule, the Board found good cause under 5 U.S.C. 553(b)(3)(B) to conclude that publication of a notice of proposed rulemaking was impracticable. Accordingly, the Board is not required to perform an initial or final regulatory flexibility analysis. Nonetheless, the Board is publishing a final regulatory flexibility analysis. Based on its analysis and for the reasons stated below, the Board believes that the final rule is not likely to have a significant economic impact on a substantial number of small entities.

1. *Statement of the need for, and objectives of, the final rule.* This final rule implements the Gift Card Amendment by delaying the effective date of certain disclosures required by the Credit Card Act. This final rule also carries out the intended purpose of the Gift Card Amendment by delaying the effective date of certain supplemental requirements adopted in the final gift card rule. The Board believes that these revisions to Regulation E are within Congress's broad grant of authority to the Board to adopt provisions that carry out the purposes of the Credit Card Act and to facilitate compliance with the EFTA. These revisions facilitate compliance with the EFTA by permitting gift certificates, store gift cards, and general-use prepaid cards produced prior to April 1, 2010 to be sold through January 31, 2011, even if they do not state the disclosures required under the final gift card rule, so long as consumers continue to receive specified substantive protections with respect to certificate or card fees and expiration dates.

2. *Small entities affected by the final rule.* The number of small entities affected by this final rule is unknown, as discussed in more detail in the Regulatory Flexibility Analysis in the

final gift card rule. 75 FR 16610 (Apr. 1, 2010). The delayed effective date of certain disclosures on certificates and cards will reduce the burden and compliance costs for small institutions by providing relief from the requirement to remove and destroy non-compliant certificates and cards and to replace them with compliant certificates or cards, so long as consumers are provided substantive rights under the rule and so long as alternative specified disclosures are made.

3. *Reporting, recordkeeping, and compliance requirements.* The compliance requirements of this final rule are described above in Part III. Section-by-Section Analysis.

4. *Steps taken to minimize economic impact on small entities.* As previously noted, the final rule implements the statutory mandate to delay the effective date of certain gift card provisions of the Credit Card Act. The final rule also delays the effective date of certain additional requirements finalized in the April 2010 final gift card rule. As such, the final rule minimizes the economic impact of the final gift card rule on small entities.

5. *Other federal rules.* The Board has not identified any federal rules that duplicate, overlap, or conflict with the final revisions to Regulation E.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The collection of information that is subject to the PRA by this final rule is found in 12 CFR part 205. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid OMB control number. The OMB control number is 7100–0200.

This information collection is required to provide benefits for consumers and is mandatory. *See* 15 U.S.C. 1693 *et seq.* Since the Board does not collect any information, no issue of confidentiality arises. The respondents/recordkeepers are for-profit financial institutions, including small businesses. Institutions are required to retain records for 24 months, but this regulation does not specify types of records that must be retained.

The Gift Card Amendment amends section 403 of the Credit Card Act to delay the effective date of certain gift card disclosure provisions of the Credit Card Act for certificates or cards produced prior to April 1, 2010. The Gift Card Amendment provides an extended effective date with respect to these provisions in order to permit the sale of existing card stock until January 31, 2011. The final rule published today revises the April 2010 final gift card rule in order to implement the Gift Card Amendment.

While the final rule delays the implementation of several disclosure requirements (§§ 205.20(c)(3), (d)(2), (e)(1), and (e)(3)), and temporarily implements several other requirements (§§ 205.20(h)), it does not change the overall burden associated with Regulation E. The Federal Reserve believes that the original burden estimates are more than sufficient to cover the temporary requirements. The estimates and total burden (738,600 hours) therefore will remain unchanged as published in the final rule. The Federal Reserve continues to expect that the amount of time required to implement each of the proposed changes for a given institution may vary based on the size and complexity of the respondent.

The other federal financial agencies are responsible for estimating and reporting to OMB the total paperwork burden for the institutions for which they have administrative enforcement authority. They may, but are not required to, use the Federal Reserve's burden estimation methodology. Using the Federal Reserve's method, the total annual burden for the respondents regulated by the federal financial agencies is estimated to be 4,430,659 hours. This estimate also remains unchanged.

The Federal Reserve has a continuing interest in the public's opinions of our collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100–0200), Washington, DC 20503.

List of Subjects in 12 CFR Part 205

Consumer protection, Electronic fund transfers, Federal Reserve System, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Board adopts as final the interim final rule published at 75 FR 50683, August 17, 2010, with the following changes:

PART 205—ELECTRONIC FUND TRANSFERS (REGULATION E)

■ 1. The authority citation for part 205 continues to read as follows:

Authority: 15 U.S.C. 1693b.

■ 2. In § 205.20 paragraphs (c)(2) and (g)(1) are republished and paragraph (h) is revised to read as follows:

§ 205.20 Requirements for gift cards and gift certificates.

* * * * *

(c) * * *

(2) *Format.* Disclosures made under this section generally must be provided to the consumer in written or electronic form. Except for the disclosures in paragraphs (c)(3) and (h)(2), written and electronic disclosures made under this section must be in a retainable form. Only disclosures provided under paragraphs (c)(3) and (h)(2) of this section may be given orally.

* * * * *

(g) * * *

(1) *Effective date for gift certificates, store gift cards, and general-use prepaid cards.* Except as provided in paragraph (h), the requirements of this section apply to any gift certificate, store gift card, or general-use prepaid card sold to a consumer on or after August 22, 2010, or provided to a consumer as a replacement for such certificate or card.

* * * * *

(h) *Temporary exemption.* (1) *Delayed effective date.* For any gift certificate, store gift card, or general-use prepaid card produced prior to April 1, 2010, the effective date of the requirements of paragraphs (c)(3), (d)(2), (e)(1), (e)(3), and (f) of this section is January 31, 2011, provided that an issuer of such certificate or card:

(i) Complies with all other provisions of this section;

(ii) Does not impose an expiration date with respect to the funds underlying such certificate or card;

(iii) At the consumer's request, replaces such certificate or card if it has funds remaining at no cost to the consumer; and

(iv) Satisfies the requirements of paragraph (h)(2) of this section.

(2) *Additional disclosures.* Issuers relying on the delayed effective date in § 205.20(h)(1) must disclose through in-store signage, messages during customer service calls, Web sites, and general advertising, that:

(i) The underlying funds of such certificate or card do not expire;

(ii) Consumers holding such certificate or card have a right to a free replacement certificate or card, which must be accompanied by the packaging

and materials typically associated with such certificate or card; and

(iii) Any dormancy, inactivity, or service fee for such certificate or card that might otherwise be charged will not be charged if such fees do not comply with Section 915 of the Electronic Fund Transfer Act.

(3) *Expiration of additional disclosure requirements.* The disclosures in paragraph (h)(2) of this section:

(i) Are not required to be provided on or after January 31, 2011, with respect to in-store signage and general advertising.

(ii) Are not required to be provided on or after January 31, 2013, with respect to messages during customer service calls and Web sites.

* * * * *

■ 3. In Supplement I to part 205, new paragraph 20(h) is revised as follows:

Supplement I to Part 205—Official Staff Interpretations

* * * * *

Section 205.20—Requirements for Gift Cards and Gift Certificates

* * * * *

20(h) Temporary Exemption

20(h)(1)—Delayed Effective Date

1. *Application to certificates or cards produced prior to April 1, 2010.* Certificates or cards produced prior to April 1, 2010 may be sold to a consumer on or after August 22, 2010 without satisfying the requirements of § 205.20(c)(3), (d)(2), (e)(1), (e)(3), and (f) through January 30, 2011, provided that issuers of such certificates or cards comply with the additional substantive and disclosure requirements of §§ 205.20(h)(1)(i) through (iv). Issuers of certificates or cards produced prior to April 1, 2010 need not satisfy these additional requirements if the certificates or cards fully comply with the rule (§§ 205.20(a) through (f)). For example, the in-store signage and other disclosures required by § 205.20(h)(2) do not apply to gift cards produced prior to April 1, 2010 that do not have fees and do not expire, and which otherwise comply with the rule.

2. *Expiration of temporary exemption.* Certificates or cards produced prior to April 1, 2010 that do not fully comply with §§ 205.20(a) through (f) may not be issued or sold to consumers on or after January 31, 2011.

20(h)(2)—Additional Disclosures

1. *Disclosures through third parties.* Issuers may make the disclosures required by § 205.20(h)(2) through a third party, such as a retailer or merchant. For example, an issuer may have a merchant install in-store signage with the disclosures required by § 205.20(h)(2) on the issuer's behalf.

2. *General advertising disclosures.* Section 205.20(h)(2) does not impose an obligation on the issuer to advertise gift certificates, store gift cards, or general-use prepaid cards.

By order of the Board of Governors of the Federal Reserve System, October 22, 2010.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–27191 Filed 10–28–10; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0516; Directorate Identifier 2009–NM–251–AD; Amendment 39–16484; AD 2010–22–05]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Model F.28 Mark 0070 and 0100 Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This 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:

When preparing for landing, the flight crew of a F28 Mark 0100 (Fokker 100) aeroplane observed a main landing gear (MLG) unsafe indication after landing gear down selection. * * * [T]he right (RH) MLG was partly extended and the left (LH) MLG door was open but without the MLG being extended. * * *

Subsequent investigation revealed that the cause of the MLG extension problem was the (partially) blocked hydraulic return line from the MLG selector valve by pieces of hard plastic. These were identified as parts of the poppet seat of PBSOV [parking brake shut-off valve] Part Number (P/N) 70379. * * *

This condition, if not detected and corrected, could lead to further events where the MLG fails to extend, possibly resulting in loss of control of the aeroplane during landing.

* * * * *

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective December 3, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of December 3, 2010.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on May 18, 2010 (75 FR 27668). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

When preparing for landing, the flight crew of a F28 Mark 0100 (Fokker 100) aeroplane observed a main landing gear (MLG) unsafe indication after landing gear down selection. The approach was aborted and the landing gear unsafe procedure was accomplished. As this did not produce the desired effect, a low pass was performed and the control tower confirmed that the right (RH) MLG was partly extended and the left (LH) MLG door was open but without the MLG being extended. Eventually the aeroplane landed with partly extended landing gear, without resulting in serious injuries to the occupants.

Subsequent investigation revealed that the cause of the MLG extension problem was the (partially) blocked hydraulic return line from the MLG selector valve by pieces of hard plastic. These were identified as parts of the poppet seat of PBSOV [parking brake shut-off valve] Part Number (P/N) 70379. The PBSOV installed on the incident aeroplane was a modified version of P/N 70379, identified by suffix "A" behind the serial number on the identification plate. This modification was introduced by Eaton, the valve manufacturer, with Eaton Service Bulletin (SB) 70379–32–01 and includes replacement of the original poppet with clamped hard plastic seat by an improved poppet assembly with screwed-on seat. When the affected valve was opened, it was confirmed that it contained the improved poppet assembly. The poppet seat fragments found in the return system therefore originated from a previously installed (pre SB 70379–32–01) P/N 70379 PBSOV and must have been present in the return/pressure line prior to installation of the modified PBSOV.

This condition, if not detected and corrected, could lead to further events where the MLG fails to extend, possibly resulting in loss of control of the aeroplane during landing.

For the reasons described above, this [EASA] AD requires the [detailed] inspection of the associated hydraulic lines, irrespective what type PBSOV is installed, removal of

contamination in the system, if any, and replacement of each unmodified PBSOV with a modified unit. This [EASA] AD also prohibits, after installation of a modified PBSOV on an aeroplane, re-installation of an unmodified PBSOV on that aeroplane.

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

Comments

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

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect 6 products of U.S. registry. We also estimate that it will take about 4 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $2,040, or $340 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–22–05 Fokker Services B.V.: Amendment 39–16484. Docket No. FAA–2010–0516; Directorate Identifier 2009–NM–251–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 3, 2010.

Affected ADs

(b) None.

Applicability

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

Subject

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

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

When preparing for landing, the flight crew of a F28 Mark 0100 (Fokker 100) aeroplane observed a main landing gear (MLG) unsafe indication after landing gear down selection. * * * [T]he right (RH) MLG was partly extended and the left (LH) MLG door was open but without the MLG being extended. * * *

Subsequent investigation revealed that the cause of the MLG extension problem was the (partially) blocked hydraulic return line from the MLG selector valve by pieces of hard plastic. These were identified as parts of the poppet seat of PBSOV [parking brake shut-off valve] Part Number (P/N) 70379. * * *

This condition, if not detected and corrected, could lead to further events where the MLG fails to extend, possibly resulting in loss of control of the aeroplane during landing.

* * * * *

Compliance

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

Actions

(g) Do the following actions.

(1) Within 30 days after the effective date of this AD, do a detailed inspection of the hydraulic lines associated with the PBSOV for contamination in the system (the presence of pieces of material from the poppet seat of an unmodified PBSOV having P/N 70379). If any contamination is found, before further flight, remove the contamination, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–32–159, dated October 6, 2009.

(2) Within 18 months after the effective date of this AD, re-inspect the hydraulic lines and do all applicable corrective actions as required by paragraph (g)(1) of this AD, and replace the unmodified PBSOV having P/N 70379, with a modified PBSOV having P/N

70379 having the suffix "A" behind the serial number on the identification plate, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–32–159, dated October 6, 2009.

(3) After accomplishing paragraph (g)(2) of this AD, do not install any unmodified PBSOV having P/N 70379, unless the PBSOV having P/N 70379 has been modified, having the suffix "A" behind the serial number on the identification plate, in accordance with the Accomplishment Instructions of Eaton Service Bulletin 70379–32–01, dated September 15, 2001.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(h) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(i) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2009–0220, dated October 14, 2009; Fokker Service Bulletin SBF100–32–159, dated October 6, 2009; and Eaton Service Bulletin 70379–32–01, dated September 15, 2001; for related information.

Material Incorporated by Reference

(j) You must use Fokker Service Bulletin SBF100–32–159, dated October 6, 2009; and Eaton Service Bulletin 70379–32–01, dated September 15, 2001; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands; telephone +31 (0)252–627–350; fax +31 (0)252–627–211; e-mail *technicalservices.fokkerservices@stork.com*; Internet *http://www.myfokkerfleet.com*.

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

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on October 13, 2010.

John Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–26548 Filed 10–28–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0697; Directorate Identifier 2010–NM–102–AD; Amendment 39–16485; AD 2010–22–06]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–201, –202, –203, –223, and –243 Airplanes, and Model A330–300 Series Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This 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:

An A330 experienced an uncommanded engine #1 in flight spool down, which occurred while applying fuel gravity feed procedure, in response to low pressure indications from all fuel boost pumps, in both left and right wings.

The investigations revealed that the wing tank pressure switches P/N (part number) HTE69000–1 had frozen due to water accumulated in their external part, causing spurious low pressure indications.

As per procedure, the main pumps are then switched off, increasing the level of unavailable fuel. This, in combination with very low fuel quantities or another independent trapped fuel failure scenarios, can lead to fuel starvation on the affected engine(s). * * *

* * * * *

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective December 3, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 3, 2010.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.com* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on July 13, 2010 (75 FR 39869). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

An A330 experienced an uncommanded engine #1 in flight spool down, which occurred while applying fuel gravity feed procedure, in response to low pressure indications from all fuel boost pumps, in both left and right wings.

The investigations revealed that the wing tank pressure switches P/N (part number) HTE69000–1 had frozen due to water accumulated in their external part, causing spurious low pressure indications.

As per procedure, the main pumps are then switched off, increasing the level of unavailable fuel. This, in combination with very low fuel quantities or another independent trapped fuel failure scenarios, can lead to fuel starvation on the affected engine(s). This condition, if not corrected, could lead to a potential unsafe condition.

This AD requires the replacement of all four wing tank fuel pressure switches associated to main pumps by new ones with a more robust design preventing water accumulation and freezing.

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

Comments

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

Clarification of Applicability

We have specified the specific A330–200 models in the subject heading of this AD to indicate that Models A330–223F and A330–243F are not affected by this AD.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD with the change described previously. We also determined that this change will not increase the economic burden on any operator or increase the scope of the AD.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect about 48 products of U.S. registry. We also estimate that it will take about 7 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $28,560, or $595 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–22–06 Airbus: Amendment 39–16485. Docket No. FAA–2010–0697; Directorate Identifier 2010–NM–102–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 3, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes, certificated in any category, all manufacturer serial numbers, equipped with part number (P/N) HTE69000–1 wing tank pressure switches installed at Functional Item Number (FIN) locations 74QA1, 74QA2, 75QA1 or 75QA2.

Subject

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

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

An A330 experienced an uncommanded engine #1 in flight spool down, which occurred while applying fuel gravity feed procedure, in response to low pressure indications from all fuel boost pumps, in both left and right wings.

The investigations revealed that the wing tank pressure switches P/N HTE69000–1 had frozen due to water accumulated in their external part, causing spurious low pressure indications.

As per procedure, the main pumps are then switched off, increasing the level of unavailable fuel. This, in combination with very low fuel quantities or another independent trapped fuel failure scenarios, can lead to fuel starvation on the affected engine(s). * * *

* * * * *

Compliance

(f) You are responsible for having the actions required by this AD performed within

the compliance times specified, unless the actions have already been done.

Actions

(g) Within 5 years after the effective date of this AD, replace the wing tank main pump pressure switches having P/N HTE69000–1 in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–28–3111, Revision 02, dated March 24, 2010.

(h) Actions accomplished before the effective date of this AD according to Airbus Mandatory Service Bulletin A330–28–3111, dated August 12, 2009; or Revision 01, dated December 4, 2009; are considered acceptable for compliance with the corresponding actions specified in this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences

Other FAA AD Provisions

(i) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(j) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2010–0018, dated February 4, 2010; and Airbus Mandatory Service Bulletin A330–28–3111, Revision 02, dated March 24, 2010; for related information.

Material Incorporated by Reference

(k) You must use Airbus Mandatory Service Bulletin A330–28–3111, Revision 02, dated March 24, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; e-mail *airworthiness.A330-A340@airbus.com*; Internet *http://www.airbus.com.*

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

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on October 13, 2010.

John Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–26553 Filed 10–28–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0645; Directorate Identifier 2009–NM–200–AD; Amendment 39–16483; AD 2010–22–04]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Corporation Model MD–90–30 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for the products listed above. That AD currently requires a detailed inspection for certain defects of the upper fasteners of the aft mount support fittings of the left and right engines, and corrective actions if necessary. This new AD requires repetitive replacement of the upper row of fasteners of the support fittings of the engine aft mount with new fasteners; and repetitive general visual inspections for defects of the lower row fasteners (Row B) of the support fittings of the left and right engine aft mounts, and replacement of all clearance fit fasteners in the lower row if necessary. This AD was prompted by reports of loose, cracked, or missing fasteners in the aft mount support fitting of the left and right engines. We are issuing this AD to prevent loose, cracked, or missing fasteners in the engine aft mount support fittings, which could lead to separation of the support fittings from the pylon, and could result in separation of the engine from the airplane.

DATES: This AD is effective December 3, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of December 3, 2010.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800 0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Roger Durbin, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5233; fax (562) 627–5210; e-mail: *Roger.Durbin@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede airworthiness

directive (AD) 2008–18–10, amendment 39–15667 (73 FR 52203, September 9, 2008). That AD applies to the specified products. The NPRM was published in the **Federal Register** on July 1, 2010 (75 FR 38056). That NPRM proposed to require repetitive replacement of the upper row of fasteners (Row A) of the support fittings of the left and right engine aft mount with new fasteners. That NPRM also proposed to require repetitive general visual inspections for defects of the lower row fasteners (Row B) of the support fittings of the left and right engine aft mounts (that includes a gap check under the head or nut, and a torque check), as necessary for defects of the lower row of fasteners (Row B) of the support fittings of the left and right engine aft mounts, and replacing all clearance fit fasteners in the lower row (Row B) with new fasteners if any defect is found. Defects include missing, loose, and damaged fasteners.

Comments

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

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

We estimate that this AD affects 13 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replacement	14 work-hour × $85 per hour = $1,190.	$152 per replacement	$1,342 per replacement cycle.	$17,446 per replacement cycle.
Inspections	4 work-hours × $85 per hour = $340.	$0	$340 per inspection cycle	$4,420 per inspection cycle.

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2008–18–10, Amendment 39–15667 (73 FR 52203, September 9, 2008), and adding the following new AD:

2010–22–04 McDonnell Douglas Corporation: Amendment 39–16483; Docket No. FAA–2010–0645; Directorate Identifier 2009–NM–200–AD.

Effective Date

(a) This airworthiness directive (AD) is effective December 3, 2010.

Affected ADs

(b) This AD supersedes AD 2008–18–10, Amendment 39–15667.

Applicability

(c) This AD applies to McDonnell Douglas Corporation Model MD–90–30 airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin MD90–54A003, Revision 2, dated February 12, 2010.

Subject

(d) Air Transport Association (ATA) of America Code 54: Nacelles/Pylons.

Unsafe Condition

(e) This AD results from reports of loose, cracked, or missing fasteners in the aft mount support fitting of the left and right engines. The Federal Aviation Administration is issuing this AD to prevent loose, cracked, or missing fasteners in the engine aft support mount fittings, which could lead to separation of the support fittings from the pylon, and could result in separation of the engine from the airplane.

Compliance

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

Replacement and Inspection

(g) Except as required by paragraph (i) of this AD, at the applicable time specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin MD90–54A003, Revision 2, dated February 12, 2010: Replace the upper row of fasteners (Row A) of the support fittings of the left and right engine aft mounts with new fasteners, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–54A003, Revision 2, dated February 12, 2010. Repeat the replacement thereafter at intervals not to exceed 10,000 flight cycles.

(h) Concurrently with any replacement required by paragraph (g) of this AD: Perform a general visual inspection for defects of the lower row fasteners (Row B) of the support fittings of the left and right engine aft

mounts, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–54A003, Revision 2, dated February 12, 2010. Defects include missing, loose, and damaged fasteners.

(1) If no defect is found during any general visual inspection required by paragraph (h) of this AD, before further flight, insert a 0.0015-inch feeler gauge between the washer and the structure, or between the fastener head and structure, as applicable, to detect a gap condition, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–54A003, Revision 2, dated February 12, 2010. A gap condition is a defect identified in any location where the feeler gauge can slip completely between a washer or a fastener head and the structure.

(i) If no defect is found during any gap check required by paragraph (h)(1) of this AD, before further flight, apply torque to the fasteners of the lower row (Row B) to determine if there is a defect, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–54A003, Revision 2, dated February 12, 2010. A defect is any fastener that turns with the application of the specified torque. If any defect is found, before further flight, replace all clearance fit fasteners in the lower row (Row B), in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–54A003, Revision 2, dated February 12, 2010.

(ii) If any defect is found during any gap check required by paragraph (h)(1) of this AD, before further flight, replace all clearance fit fasteners in the lower row (Row B), in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–54A003, Revision 2, dated February 12, 2010.

(2) If any defect is found during any general visual inspection required by paragraph (h) of this AD, before further flight, replace all clearance fit fasteners in the lower row (Row B), in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–54A003, Revision 2, dated February 12, 2010.

Exception to Service Bulletin Compliance Times

(i) Where Boeing Alert Service Bulletin MD90–54A003, Revision 2, dated February 12, 2010, specifies a compliance time after the original issue date on the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

Credit for Actions Accomplished in Accordance With Previous Service Information

(j) Replacements and inspections accomplished before the effective date of this AD in accordance with Boeing Alert Service Bulletin MD90–54A003, Revision 1, dated November 17, 2009, are considered acceptable for compliance with the corresponding actions required by this AD.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

(2) Before using any approved AMOC, notify your Principal Maintenance Inspector or Principal Avionics Inspector, as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

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

Related Information

(l) For more information about this AD, contact Roger Durbin, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5233; fax (562) 627–5210; e-mail: *Roger.Durbin@faa.gov*.

Material Incorporated by Reference

(m) You must use Boeing Alert Service Bulletin MD90–54A003, Revision 2, dated February 12, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800 0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

(3) You may review copies of the service information at the FAA, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on October 13, 2010.

John Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–26555 Filed 10–28–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0849; Directorate Identifier 2010–CE–043–AD; Amendment 39–16488; AD 2010–22–09]

RIN 2120–AA64

Airworthiness Directives; PILATUS Aircraft Ltd. Model PC–7 Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued 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:

This Airworthiness Directive (AD) is prompted due to an occurrence when an aircraft had a partial in-flight separation of the aileron outboard bearing support.

The aileron outboard bearing supports are attached with two forward attachment bolts and two aft attachment bolts. The forward attachment bolts are approximately 3.2 mm (0.125 inch) longer than the aft attachment bolts. If the aileron outboard bearing supports have been removed, it is possible that during the reinstallation of the aileron outboard bearing supports, the attachment bolts can be installed in wrong positions. Bolts that are installed in wrong positions can damage the threads in the rear attachment anchor nuts.

Such a condition, if left uncorrected, could lead to in-flight separation of the aileron outboard bearing support, and as a consequence, the loss or limited controllability of the aircraft.

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective December 3, 2010.

On December 3, 2010, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

For service information identified in this AD, contact Pilatus Aircraft Ltd.,

Customer Service Manager, CH–6371 STANS, Switzerland; telephone: +41 (0) 41 619 62 08; fax: +41 (0) 41 619 73 11; Internet: *http://www.pilatus-aircraft.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.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; e-mail: *doug.rudolph@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on August 26, 2010 (75 FR 52482). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> This Airworthiness Directive (AD) is prompted due to an occurrence when an aircraft had a partial in-flight separation of the aileron outboard bearing support.
>
> The aileron outboard bearing supports are attached with two forward attachment bolts and two aft attachment bolts. The forward attachment bolts are approximately 3.2 mm (0.125 inch) longer than the aft attachment bolts. If the aileron outboard bearing supports have been removed, it is possible that during the reinstallation of the aileron outboard bearing supports, the attachment bolts can be installed in wrong positions. Bolts that are installed in wrong positions can damage the threads in the rear attachment anchor nuts.
>
> Such a condition, if left uncorrected, could lead to in-flight separation of the aileron outboard bearing support, and as a consequence, the loss or limited controllability of the aircraft.
>
> In order to correct and control the situation, this AD requires a one time inspection to verify that the bolts are installed in the correct positions and the threads of the anchor nuts are in good condition. The replacement of the attachment hardware is required if any damage on the anchor nut threads or a bolt at the wrong location is found.

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

Comments

We gave the public the opportunity to participate in developing this AD. We have considered the comment received. Pilatus Aircraft Ltd. supports the NPRM and its adoption as a final rule AD action.

Conclusion

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

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

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect 12 products of U.S. registry. We also estimate that it will take about 2 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of this AD on U.S. operators to be $2,040, or $170 per product.

In addition, we estimate that any necessary follow-on actions will take about 25 work-hours and require parts costing $200, for a cost of $2,325 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 AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

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

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

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 the NPRM, 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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–22–09 Pilatus Aircraft Ltd.: Amendment 39–16488; Docket No. FAA–2010–0849; Directorate Identifier 2010–CE–043–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 3, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to PILATUS Aircraft Ltd. Model PC–7 airplanes, manufacturer serial numbers (MSN) 101 through 618, certificated in any category.

Subject

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

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

This Airworthiness Directive (AD) is prompted due to an occurrence when an aircraft had a partial in-flight separation of the aileron outboard bearing support.

The aileron outboard bearing supports are attached with two forward attachment bolts and two aft attachment bolts. The forward attachment bolts are approximately 3.2 mm (0.125 inch) longer than the aft attachment bolts. If the aileron outboard bearing supports have been removed, it is possible that during the reinstallation of the aileron outboard bearing supports, the attachment bolts can be installed in wrong positions. Bolts that are installed in wrong positions can damage the threads in the rear attachment anchor nuts.

Such a condition, if left uncorrected, could lead to in-flight separation of the aileron outboard bearing support, and as a consequence, the loss or limited controllability of the aircraft.

In order to correct and control the situation, this AD requires a one time inspection to verify that the bolts are installed in the correct positions and the threads of the anchor nuts are in good condition. The replacement of the attachment hardware is required if any damage on the anchor nut threads or a bolt at the wrong location is found.

Actions and Compliance

(f) Unless already done, do the following actions:

(1) Within 1 month after December 3, 2010 (the effective date of this AD), check the airplane maintenance records to determine if the left and/or right aileron outboard bearing supports have been removed at any time during the life of the airplane. Do this check following paragraph 3.A. of Pilatus Aircraft Ltd. PC–7 Service Bulletin No. 57–015, Rev. No. 1, dated July 23, 2010.

(2) If an entry is found during the airplane maintenance records check required in paragraph (f)(1) of this AD or it is unclear whether or not the left and/or right aileron outboard bearing supports have been removed at any time during the life of the airplane, before further flight, do the actions specified in paragraphs 3.A.(2) through paragraph 3.E of Pilatus Aircraft Ltd. PC–7 Service Bulletin No. 57–015, Rev. No. 1, dated July 23, 2010.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) 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: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090. 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.

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

Special Flight Permit

(h) Special flight permits will not be issued.

Related Information

(i) Refer to MCAI Federal Office of Civil Aviation (FOCA) AD HB–2010–010, dated July 29, 2010; and Pilatus Aircraft Ltd. PC–7 Service Bulletin No. 57–015, Rev. No. 1, dated July 23, 2010, for related information.

Material Incorporated by Reference

(j) You must use Pilatus Aircraft Ltd. PC–7 Service Bulletin No. 57–015, Rev. No. 1, dated July 23, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Pilatus Aircraft Ltd., Customer Service Manager, CH–6371 STANS, Switzerland; telephone: +41 (0) 41 619 62 08; fax: +41 (0) 41 619 73 11; Internet: *http://www.pilatus-aircraft.com.*

(3) 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.

(4) You may also review copies of the service information incorporated by reference for this AD at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Kansas City, Missouri, on October 21, 2010.

Christina L. Marsh,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–27214 Filed 10–28–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0780; Directorate Identifier 2009–SW–68–AD; Amendment 39–16486; AD 2010–22–07]

RIN 2120–AA64

Airworthiness Directives; Eurocopter Deutschland GmbH Model MBB–BK 117 C–2 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) for the Eurocopter Deutschland GmbH (ECD) Model MBB BK 117 C–2 helicopters. This amendment results from a mandatory continuing airworthiness information (MCAI) AD issued by the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community. The MCAI AD states there was an in-flight incident in which a dynamic weight broke off the

control lever leading to considerable vibrations. A visual inspection revealed that the threaded bolt of the control lever had broken off. The actions specified by this AD are intended to prevent separation of dynamic weights, severe vibration, and subsequent loss of control of the helicopter.

DATES: Effective December 3, 2010.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 3, 2010.

ADDRESSES: You may get the service information identified in this AD from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527.

Examining the Docket: You may examine the AD docket on the Internet at *http://www.regulations.gov,* or in person at the Docket Operations Office, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: DOT/FAA Southwest Region, Sharon Miles, ASW–111, Aviation Safety Engineer, Rotorcraft Directorate, Regulations and Policy Group, 2601 Meacham Blvd., ASW–111, Fort Worth, Texas 76137, telephone (817) 222–5122, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Discussion

A proposal to amend 14 CFR Part 39 by superseding AD 2006–26–51, Amendment 39 14961 (72 FR 13679, March 23, 2007) for the specified ECD model helicopters was published in the **Federal Register** on August 11, 2010 (75 FR 48617). AD 2006–26–51 requires actions intended to address an unsafe condition on the Model MBB–BK 117 C–2 helicopters. Since we issued AD 2006–26–51, the manufacturer has modified the control lever and dynamic weights, which when installed on the helicopter will constitute terminating action for the requirements in AD 2006–26–51.

EASA, which is the technical agent for the Member States of the European Community, has issued EASA AD No. 2007–0237, dated August 31, 2007, to correct an unsafe condition for the Model MBB–BK 117 C–2 helicopters. The MCAI AD states: "EASA was informed by the manufacturer of an in-flight incident in which a dynamic weight broke off the control lever subsequently leading to considerable vibrations. A visual inspection revealed that the threaded bolt of the control lever had broken off."

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

Related Service Information

ECD has issued ECD Alert Service Bulletin MBB BK117 C–2–64A–002, Revision 2, dated August 6, 2007. The actions described in the MCAI AD are intended to correct the same unsafe condition as that identified in the service information.

FAA's Evaluation and Unsafe Condition Determination

This helicopter has been approved by the aviation authority of the Federal Republic of Germany and is approved for operation in the United States. Pursuant to our bilateral agreement with the Federal Republic of Germany, EASA, their Technical Agent, has notified us of the unsafe condition described in the MCAI AD. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of this same type design.

Differences Between the AD and the MCAI AD

We refer to flight hours as hours time-in-service. We do not refer to a date of October 31, 2007, for replacing the levers because the date has passed.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. We have determined that air safety and the public interest require the adoption of the rule as proposed.

Cost of Compliance

We estimate that this AD will affect 41 helicopters of U.S. registry. We also estimate that it will take about 20 work-hours per helicopter to inspect and replace the tail rotor control lever. The average labor rate is $85 per work-hour, and required parts will cost about $10,316 per helicopter. Based on these figures, we estimate the total cost of this AD to U.S. operators to be $492,656, or $12,016 per helicopter, assuming the control lever is replaced on the entire fleet.

Regulatory Findings

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

For the reasons discussed above, I certify that the 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); and

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

We prepared an economic evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing Amendment 39 14961 (72 FR 13679, March 23, 2007), and by adding

a new airworthiness directive (AD), Amendment 39 16486, to read as follows:

2010–22–07 Eurocopter Deutschland GmbH: Amendment 39–16486; Docket No. FAA–2010–0780; Directorate Identifier 2009–SW–68–AD. Supersedes AD 2006–26–51, Amendment 39 14961, Docket No. FAA–2006–26721, Directorate Identifier 2006–SW–28–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective on December 3, 2010.

Other Affected ADs

(b) This AD supersedes AD 2006–26–51, Amendment 39–14961, Docket No. FAA 2006–26721, Directorate Identifier 2006–SW–28–AD.

Applicability

(c) This AD applies to Model MBB–BK 117 C–2 helicopters with a tail rotor control lever B642M1009103, installed, certificated in any category.

Reason

(d) The mandatory continued airworthiness information (MCAI) AD states: "European Aviation Safety Agency (EASA) was informed by the manufacturer of an in-flight incident in which a dynamic weight broke off the control lever subsequently leading to considerable vibrations. A visual inspection revealed that the threaded bolt of the control lever had broken off." This AD requires actions that are intended to prevent separation of dynamic weights, severe vibration, and subsequent loss of control of the helicopter.

Actions and Compliance

(e) Before further flight, unless already done, mark the position of the weights, remove the split pins, remove the weights, and visually inspect the tail rotor control lever in the area around the split pin bore for score marks, notching, scratching, or a crack. Inspect by following the Accomplishment Instructions, paragraph 3.A.(1) through 3.A.(3) and Figure 1, of Eurocopter Alert Service Bulletin MBB BK 117 C–2–64A–002, Revision 2, dated August 6, 2007 (ASB).

(1) If done previously, within the next 8 hours time-in-service (TIS) or before reaching 25 hours TIS after the last inspection, and thereafter at intervals not to exceed 8 hours TIS, repeat the visual inspection of the tail rotor control lever as required by paragraph (e) of this AD.

(2) If you find a score mark, a notch, or a scratch that exceeds the maintenance manual limits, or find a crack, before further flight:

(i) Replace the tail rotor control lever with an airworthy tail rotor control lever; and

(ii) Reidentify the tail rotor head, head assembly, and drive system with the new part numbers by following the Accomplishment Instructions, paragraph 3.B.(1) through 3.B.(8) and 3.C.(1) through 3.C.(2), of the ASB.

(f) Within 100 hours TIS, unless already done, replace the control levers and reidentify the tail rotor head, head assembly, and drive system with the new part numbers by following the Accomplishment Instructions, paragraph 3.B.(1) through 3.B.(8) and 3.C.(1) through 3.C.(2), of the ASB.

(g) Replacing the control levers and reidentifying the part numbers is terminating action for the requirements of this AD.

Differences Between the FAA AD and the MCAI AD

(h) We refer to flight hours as hours TIS. We do not refer to a date of October 31, 2007, for replacing the levers because the date has passed.

Other Information

(i) Alternative Methods of Compliance (AMOCs): The Manager, Safety Management Group, ATTN: DOT/FAA Southwest Region, Sharon Miles, ASW–111, Aviation Safety Engineer, Rotorcraft Directorate, Regulations and Policy Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5122, fax (817) 222 5961, has the authority to approve AMOCs for this AD, if requested, using the procedures found in 14 CFR 39.19.

(j) Special flight permits are prohibited.

Related Information

(k) MCAI EASA Airworthiness Directive No. 2006–0237, dated August 31, 2007, which supersedes EASA Emergency AD 2007–0189–E, dated July 12, 2007, contains related information.

Joint Aircraft System/Component Code

(l) The Joint Aircraft System/Component Code is 6400: Tail rotor system-control lever.

Material Incorporated by Reference

(m) The actions shall be done in accordance with the specified portions of Eurocopter Deutschland GmbH Alert Service Bulletin MBB BK117 C–2–64A–002, Revision 2, dated August 6, 2007. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Fort Worth, Texas, on October 12, 2010.

Kim Smith,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2010–26563 Filed 10–28–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0680; Directorate Identifier 2008–NM–195–AD; Amendment 39–16482; AD 2010–22–03]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 Series Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This 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:

Analysis performed in the frame of the Extended Service Goal has led Airbus to modify the inspection programme [modification of thresholds, intervals and associated configurations] which is currently required by DGAC (Direction Générale de l'Aviation Civile) France AD F–2005–001.

This modified inspection programme is necessary to detect and prevent damage associated with a structural fatigue phenomenon of the rear spar internal angle and the tee fitting located in the centre wing box. This condition, if not corrected, could affect the structural integrity of the centre wing box.

* * * * *

The unsafe condition is reduced structural integrity of the wings. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective December 3, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of December 3, 2010.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on July 13, 2010 (75 FR 39863), and proposed to supersede AD 2006–09–05, Amendment 39–14575 (71 FR 25921, May 3, 2006). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> Analysis performed in the frame of the Extended Service Goal has led Airbus to modify the inspection programme [modification of thresholds, intervals and associated configurations] which is currently required by DGAC (Direction Générale de l'Aviation Civile) France AD F–2005–001 [which corresponds to FAA AD 2006–09–05].
>
> This modified inspection programme is necessary to detect and prevent damage associated with a structural fatigue phenomenon of the rear spar internal angle and the tee fitting located in the centre wing box. This condition, if not corrected, could affect the structural integrity of the centre wing box.
>
> For the reason stated above, this new EASA AD retains the requirements of DGAC France AD F–2005–001, which is superseded, and refers to the latest revision of Airbus Service Bulletin (SB) A310–57–2047.

The unsafe condition is reduced structural integrity of the wings. This AD retains the requirements of AD 2006–09–05, but with certain reduced compliance times. The required actions include doing repetitive rotating probe inspections for any crack of the rear spar internal angle and the left and right sides of the tee fitting, and doing related investigative/corrective actions if necessary. The actions also include modifying the holes in the internal angle and tee fitting by cold expansion. You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

Based on the service information, we estimate that this AD will affect about 66 products of U.S. registry.

The actions that are required by AD 2006–09–05 and retained in this AD take up to 600 work-hours per product, at an average labor rate of $85 per work hour. Required parts cost up to $38,900 per product. Based on these figures, the estimated cost of the currently required actions is up to $89,900 per product.

This new AD adds no new costs to affected operators; the manufacturer has modified the inspection program currently required by AD 2006–09–05. This AD reduces the compliance times required by the existing AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–14575 (71 FR 25921, May 3, 2006) and adding the following new AD:

2010–22–03 Airbus: Amendment 39–16482. Docket No. FAA–2010–0680; Directorate Identifier 2008–NM–195–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 3, 2010.

Affected ADs

(b) This AD supersedes AD 2006–09–05, Amendment 39–14575. This AD also affects certain requirements of AD 98–26–01, Amendment 39–10942.

Applicability

(c) This AD applies to all Airbus Model A310–203, –204, –221, –222, –304, –322,

–324, and –325 airplanes, certificated in any category.

Subject

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

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Analysis performed in the frame of the Extended Service Goal has led Airbus to modify the inspection programme [modification of thresholds, intervals and associated configurations] which is currently required by DGAC (Direction Générale de l'Aviation Civile) France AD F–2005–001 [which corresponds to FAA AD 2006–09–05].

This modified inspection programme is necessary to detect and prevent damage associated with a structural fatigue phenomenon of the rear spar internal angle and the tee fitting located in the centre wing box. This condition, if not corrected, could affect the structural integrity of the centre wing box.

* * * * *

The unsafe condition is reduced structural integrity of the wings.

Compliance

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

Restatement of Certain Requirements of AD 2006–09–05

Modification

(g) For all airplanes except those that are modified by Airbus Modifications 06672S6812, 06673S6813, and 07387S7974 in production: Within 60 months after June 7, 2006 (the effective date of AD 2006–09–05), modify the holes in the internal angle and tee fitting and do all applicable related investigative and corrective actions by accomplishing all the actions specified in the Accomplishment Instructions of Airbus Service Bulletin A310–57–2035, Revision 08, dated September 19, 2005; or Airbus Mandatory Service Bulletin A310–57–2035, Revision 10, dated March 25, 2008; except as required by paragraph (h) of this AD. Do all applicable related investigative and corrective actions before further flight. As of the effective date of this AD, use only Airbus Mandatory Service Bulletin A310–57–2035, Revision 10, dated March 25, 2008.

Contact the FAA

(h) Where the service information specified in Table 1 of this AD specifies to contact the manufacturer if certain cracks are found, before further flight, repair those conditions according to a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent); or EASA (or its delegated agent).

TABLE 1—SERVICE INFORMATION

Document	Revision	Date
Airbus Mandatory Service Bulletin A310–57–2035	10	March 25, 2008.
Airbus Service Bulletin A310–57–2035	08	September 19, 2005.

Actions Accomplished According to Previous Issues of Airbus Service Bulletin A310–57–2035

(i) Actions accomplished before June 7, 2006, in accordance with the service information specified in Table 2 of this AD, are considered acceptable for compliance with the corresponding actions specified in paragraph (g) of this AD.

TABLE 2—PREVIOUS ISSUES OF SERVICE BULLETIN A310–57–2035

Document	Revision	Date
Airbus Service Bulletin A310–57–2035	1	October 13, 1989.
Airbus Service Bulletin A310–57–2035	2	February 26, 1990.
Airbus Service Bulletin A310–57–2035	3	May 23, 1990.
Airbus Service Bulletin A310–57–2035	4	April 15, 1992.
Airbus Service Bulletin A310–57–2035	5	May 27, 1992.
Airbus Service Bulletin A310–57–2035	6	March 8, 1994.
Airbus Service Bulletin A310–57–2035	7	April 17, 1996.

New Requirements of This AD—Revised Compliance Times for Inspections Required by AD 2006–09–05

Initial and Repetitive Inspections of the Rear Spar Internal Angle

(j) For airplanes on which an inspection of the rear spar internal angle has not been done in accordance with Airbus Service Bulletin A310–57–2047 as of the effective date of this AD: At the later of the times specified in paragraphs (j)(1) and (j)(2) of this AD, do a rotating probe inspection for any crack of the rear spar internal angle located in the center wing box and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–57–2047, Revision 08, dated July 2, 2009; except as required by paragraphs (n) and (o) of this AD. Do all applicable related investigative and corrective actions before further flight. Repeat the inspection thereafter at the applicable time specified in Table 4 of this AD. Certain compliance times are applicable to short range use, average flight time (AFT) equal to or less than 4 hours, or long range use, AFT exceeding 4 hours.

Note 1: To establish the AFT, divide the accumulated flight time (counted from the take-off up to the landing) by the number of accumulated flight cycles. This gives the average flight time per flight cycle.

(1) Within the applicable time specified in Table 3 of this AD.

(2) Within the applicable time specified in paragraph (j)(2)(i), (j)(2)(ii), or (j)(2)(iii) of this AD:

(i) For A310–203, –204, –221, and –222 airplanes: Within 700 flight cycles or 1,500 flight hours after the effective date of this AD, whichever occurs first.

(ii) For A310–304, –322, –324, and –325 short range airplanes: Within 700 flight cycles or 1,900 flight hours after the effective date of this AD, whichever occurs first.

(iii) For A310–304, –322, –324, and –325 long range airplanes: Within 500 flight cycles or 2,500 flight hours after the effective date of this AD, whichever occurs first.

TABLE 3—INITIAL INSPECTION INTERNAL ANGLE

Model and configuration	Compliance time (whichever occurs first)	
A310–203, –204, –221, and –222 airplanes on which Mod 6672S6812 and Mod 7387S7974 are not done.	Before the accumulation of 9,200 total flight cycles.	Before the accumulation of 18,500 total flight hours.
A310–203, –204, –221, and –222 airplanes on which Mod 6672S6812 and Mod 7387S7974 are done in production.	Before the accumulation of 19,800 total flight cycles.	Before the accumulation of 39,600 total flight hours.
A310–203, –204, –221, and –222 airplanes on which Mod 6672S6812 and Mod 7387S7974 are done in accordance with Airbus Service Bulletin A310–57–2035 and before the accumulation of 6,200 total flight cycles and 12,500 total flight hours.	Within 19,800 flight cycles after the effective date of this AD.	Within 39,600 flight hours after the effective date of this AD.
A310–203, –204, –221, and –222 airplanes on which Mod 6672S6812 and Mod 7387S7974 are done in accordance with Airbus Service Bulletin A310–57–2035 and are not done before the accumulation of 6,200 total flight cycles and 12,500 total flight hours.	Within 8,200 flight cycles after the effective date of this AD.	Within 16,400 flight hours after the effective date of this AD.
A310–304, –322, –324, and –325 short range airplanes on which Mod 6672S6812 and Mod 7387S7974 are not done.	Before the accumulation of 7,500 total flight cycles.	Before the accumulation of 21,100 total flight hours.
A310–304, –322, –324, and –325 long range airplanes on which Mod 6672S6812 and Mod 7387S7974 are not done.	Before the accumulation of 5,300 total flight cycles.	Before the accumulation of 26,900 total flight hours.
A310–304, –322, –324, and –325 short range airplanes on which Mod 6672S6812 and Mod 7387S7974 are done.	Before the accumulation of 15,900 total flight cycles.	Before the accumulation of 44,700 total flight hours.
A310–304, –322, –324, and –325 long range airplanes on which Mod 6672S6812 and Mod 7387S7974 are done in production.	Before the accumulation of 11,300 total flight cycles.	Before the accumulation of 56,900 total flight hours.
A310–304, –322, –324, and –325 short range airplanes on which Mod 6672S6812 and Mod 7387S7974 are done in accordance with Airbus Service Bulletin A310–57–2035 and before the accumulation of 4,700 total flight cycles and 13,100 total flight hours.	Within 15,900 flight cycles after the effective date of this AD.	Within 44,700 flight hours after the effective date of this AD.
A310–304, –322, –324, and –325 short range airplanes on which Mod 6672S6812 and Mod 7387S7974 are done in accordance with Airbus Service Bulletin A310–57–2035 and not done before the accumulation of 4,700 total flight cycles and 13,100 total flight hours.	Within 8,500 flight cycles after the effective date of this AD.	Within 23,800 flight hours after the effective date of this AD.
A310–304, –322, –324, and –325 long range airplanes on which Mod 6672S6812 and Mod 7387S7974 are done in accordance with Airbus Service Bulletin A310–57–2035 before the accumulation of 3,300 total flight cycles and 16,700 total flight hours.	Within 11,300 flight cycles after the effective date of this AD.	Within 56,900 flight hours after the effective date of this AD.
A310–304, –322, –324, and –325 long range airplanes on which Mod 6672S6812 and Mod 7387S7974 are done in accordance with Airbus Service Bulletin A310–57–2035 and not done before the accumulation of 3,300 total flight cycles and 16,700 total flight hours.	Within 6,000 flight cycles after the effective date of this AD.	Within 30,300 flight hours after the effective date of this AD.

TABLE 4—REPETITIVE INTERVALS

Model and configuration	Interval (not to exceed)
A310–203, –204, –221, and –222 airplanes	Within 7,200 flight cycles or 14,400 flight hours, whichever occurs first.
A310–304, –322, –324, and –325 short range airplanes	Within 6,800 flight cycles or 19,100 flight hours, whichever occurs first.
A310–304, –322, –324, and –325 long range airplanes	Within 4,800 flight cycles or 24,300 flight hours, whichever occurs first.

(k) For airplanes on which an inspection of the rear spar internal angle has been done in accordance with Airbus Service Bulletin A310–57–2047 as of the effective date of this AD: At the applicable time specified in paragraphs (k)(1), (k)(2), and (k)(3) of this AD, do a rotating probe inspection for any crack of the rear spar internal angle located in the center wing box and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–57–2047, Revision 08, dated July 2, 2009; except as required by paragraphs (n) and (o) of this AD. Do all applicable related investigative and corrective actions before further flight. Repeat the inspection thereafter at the applicable time specified in Table 4 of this AD. Certain compliance times are applicable to short range use, AFT equal to or less than 4 hours, or long range use, AFT exceeding 4 hours.

(1) For A310–203, –204, –221, and –222 airplanes: At the earlier of the times specified in paragraphs (k)(1)(i) and (k)(1)(ii) of this AD.

(i) Within 7,940 flight cycles or 15,880 flight hours after the most recent inspection, whichever occurs first.

(ii) At the later of the times specified in paragraphs (k)(1)(ii)(A) and (k)(1)(ii)(B) of this AD.

(A) Within the applicable interval specified in Table 4 of this AD.

(B) Within 740 flight cycles or 1,480 flight hours after the effective date of this AD, whichever occurs first.

(2) For A310–304, –322, –324, and –325 short range airplanes: At the later of the times specified in paragraphs (k)(2)(i) and (k)(2)(ii) of this AD.

(i) Within the applicable interval specified in Table 4 of this AD.

(ii) Within 700 flight cycles or 1,900 flight hours after the effective date of this AD, whichever occurs first.

(3) For A310–304, –322, –324, and –325 long range airplanes: At the later of the times specified in paragraphs (k)(3)(i) and (k)(3)(ii) of this AD.

(i) Within the applicable interval specified in Table 4 of this AD.

(ii) Within 500 flight cycles or 2,500 flight hours after the effective date of this AD, whichever occurs first.

Initial and Repetitive Inspections of the Tee Fitting

(l) For airplanes on which an inspection of the left and right sides of the tee fitting has not been done in accordance with Airbus Service Bulletin A310–57–2047 as of the effective date of this AD: At the later of the times specified in paragraphs (l)(1) and (l)(2) of this AD, do a rotating probe inspection for any crack of the left and right sides of the tee fitting, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–57–2047, Revision 08, dated July 2, 2009; except as required by paragraphs (n) and (o)

of this AD. Do all applicable related investigative and corrective actions before further flight. Repeat the inspection thereafter at the applicable time specified in Table 6 of this AD. Certain compliance times are applicable to short range use, AFT equal to or less than 4 hours, or long range use, AFT exceeding 4 hours.

(1) Within the applicable time specified in Table 5 of this AD.

(2) Within the applicable time in paragraph (l)(2)(i), (l)(2)(ii), or (l)(2)(iii) of this AD.

(i) For A310–203, –204, –221, and –222 airplanes: Within 800 flight cycles or 1,600 flight hours, whichever occurs first.

(ii) For A310–304, –322, –324, and –325 short range airplanes: Within 800 flight cycles or 2,200 flight hours, whichever occurs first.

(iii) For A310–304, –322, –324, and –325 long range airplanes: Within 600 flight cycles or 3,100 flight hours, whichever occurs first.

TABLE 5—INITIAL INSPECTION TEE FITTING

Model and configuration	Compliance time (whichever occurs first)	
A310–203, –204, –221, and –222 airplanes on which Mod 6673S6813 is not done.	Before the accumulation of 14,300 flight cycles.	Within 28,700 flight hours after the effective date of this AD.
A310–203, –204, –221, and –222 airplanes on which Mod 6673S6813 is done in production.	Before the accumulation of 17,500 total flight cycles.	Before the accumulation of 35,000 total flight hours.
A310–203, –204, –221, and –222 airplanes on which Mod 6673S6813 is done in accordance with Airbus Service Bulletin A310–57–2035 and before the accumulation of 8,100 total flight cycles and 16,200 total flight hours.	Within 17,500 flight cycles after the effective date of this AD.	Within 35,000 flight hours after the effective date of this AD.
A310–203, –204, –221, and –222 airplanes on which Mod 6673S6813 is done in accordance with Airbus Service Bulletin A310–57–2035 and not before the accumulation of 8,100 total flight cycles and 16,200 total flight hours.	Within 9,600 flight cycles after the effective date of this AD.	Within 19,200 flight hours after the effective date of this AD.
A310–304, –322, –324, and –325 short range airplanes on which Mod 6673S6813 is not done.	Within 10,800 flight cycles after the effective date of this AD.	Within 30,400 flight hours after the effective date of this AD.
A310–304, –322, –324, and –325 long range airplanes on which Mod 6673S6813 is not done.	Before the accumulation of 8,500 total flight cycles.	Before the accumulation of 42,800 total flight hours.
A310–304, –322, –324, and –325 short range airplanes on which Mod 6673S6813 is done in production.	Before the accumulation of 13,100 total flight cycles.	Before the accumulation of 36,700 total flight hours.
A310–304, –322, –324, and –325 long range airplanes on which Mod 6673S6813 is done in production.	Before the accumulation of 10,300 total flight cycles.	Before the accumulation of 51,600 total flight hours.
A310–304, –322, –324, and –325 short range airplanes on which Mod 6673S6813 is done in accordance with Airbus Service Bulletin A310–57–2035 and before the accumulation of 5,800 total flight cycles and 16,400 total flight hours.	Within 13,100 flight cycles after the effective date of this AD.	Within 36,700 flight hours after the effective date of this AD.
A310–304, –322, –324, and –325 short range airplanes on which Mod 6673S6813 is done in accordance with Airbus Service Bulletin A310–57–2035 and not before the accumulation of 5,800 total flight cycles and 16,400 total flight hours.	Within 7,400 flight cycles after the effective date of this AD.	Within 20,900 flight hours after the effective date of this AD.
A310–304, –322, –324, and –325 long range airplanes on which Mod 6673S6813 is done in accordance with Airbus Service Bulletin A310–57–2035 and before the accumulation of 4,600 total flight cycles and 23,100 total flight hours.	Within 10,300 flight cycles after the effective date of this AD.	Within 51,600 flight hours after the effective date of this AD.
A310–304, –322, –324, and –325 long range airplanes on which Mod 6673S6813 is done in accordance with Airbus Service Bulletin A310–57–2035 and not before the accumulation of 4,600 total flight cycles and 23,100 total flight hours.	Within 6,000 flight cycles after the effective date of this AD.	Within 30,300 flight hours after the effective date of this AD.

TABLE 6—REPETITIVE INTERVALS

Model and configuration	Interval (not to exceed)
A310–203, –204, –221, and –222 airplanes	9,100 flight cycles or 18,300 flight hours, whichever occurs first.
A310–304, –322, –324, and –325 short range airplanes	7,300 flight cycles or 20,400 flight hours, whichever occurs first.
A310–304, –322, –324, and –325 long range airplanes	5,900 flight cycles or 29,600 flight hours, whichever occurs first.

(m) For airplanes on which an inspection of the rear left and right sides of the tee fitting has been done in accordance with Airbus Service Bulletin A310–57–2047 as of the effective date of this AD: At the applicable time specified in paragraphs (m)(1) or (m)(2) of this AD, do a rotating probe inspection for any crack of the left and right sides of the tee fitting, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–57–2047, Revision 08, dated July 2, 2009; except as required by paragraphs (n) and (o) of this AD. Do all applicable related investigative and corrective actions before further flight. Repeat the inspection thereafter at the applicable time specified in Table 6 of this AD. Certain compliance times are applicable to short range use, AFT equal to or less than 4 hours, or long range use, AFT exceeding 4 hours.

(1) For A310–203, –204, –221, and –222 airplanes: At the earlier of the times specified in paragraphs (m)(1)(i) and (m)(1)(ii) of this AD.

(i) Within 10,800 flight cycles or 17,400 flight hours after the most recent inspection, whichever occurs first.

(ii) At the later of the times specified in paragraphs (m)(1)(ii)(A) and (m)(1)(ii)(B) of this AD.

(A) Within the applicable interval specified in Table 6 of this AD.

(B) Within 700 flight cycles or 1,500 flight hours after the effective date of this AD, whichever occurs first.

(2) For A310–304, –322, –324, and – 325 airplanes: At the later of the times specified in paragraphs (m)(2)(i) and (m)(2)(ii) of this AD.

(i) Within the applicable interval specified in Table 6 of this AD.

(ii) Within 700 flight cycles or 1,900 flight hours after the effective date of this AD, whichever occurs first.

Contact the FAA

(n) Where Airbus Service Bulletin A310–57–2047, Revision 08, dated July 2, 2009, specifies to contact the manufacturer if certain cracks are found, before further flight, repair those conditions according to a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA (or its delegated agent).

No Reporting Required

(o) Although Airbus Service Bulletin A310–57–2047, Revision 08, dated July 2, 2009, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(p) Actions accomplished before the effective date of this AD in accordance with Airbus Mandatory Service Bulletin A310–57–2035, Revision 09, dated September 27, 2007, are considered acceptable for compliance with the corresponding actions specified in paragraph (g) of this AD.

(q) Actions accomplished before the effective date of this AD in accordance with the service information specified in Table 7 of this AD, are considered acceptable for compliance with the corresponding actions specified in paragraphs (j) through (m) of this AD.

TABLE 7—PREVIOUS ISSUES OF AIRBUS SERVICE BULLETIN A310–57–2047

Document	Revision	Date
Airbus Service Bulletin A310–57–2047	03	November 26, 1997.
Airbus Service Bulletin A310–57–2047	04	March 5, 1999.
Airbus Service Bulletin A310–57–2047	05	August 3, 2000.
Airbus Service Bulletin A310–57–2047	06	July 13, 2004.
Airbus Service Bulletin A310–57–2047	07	March 14, 2008.

Related AD

(r) Accomplishing a rotating probe inspection of the rear spar internal angle and the tee fitting in accordance with Airbus Service Bulletin A310–57–2047, Revision 08, dated July 2, 2009, or a service bulletin listed in Table 7 of this AD, terminates the requirements specified in paragraph (o) of AD 98–26–01.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows:

Although the MCAI or service information tells you to contact the manufacturer for repair information, paragraph (n) of this AD requires that you contact the FAA or EASA (or its delegated agent) instead.

Although the MCAI or service information tells you to submit information to the manufacturer, paragraph (o) of this AD specifies that such submittal is not required.

Other FAA AD Provisions

(s) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(2) AMOCs approved previously in accordance with AD 2006–09–05, Amendment 39–14575, are approved as AMOCs for the corresponding provisions of this AD.

(3) *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.

Related Information

(t) Refer to MCAI EASA Airworthiness Directive 2008–0187, dated October 10, 2008; Airbus Service Bulletin A310–57–2047, Revision 08, dated July 2, 2009; and Airbus Mandatory Service Bulletin A310–57–2035, Revision 10, dated March 25, 2008; for related information.

Material Incorporated by Reference

(u) You must use Airbus Mandatory Service Bulletin A310–57–2035, Revision 10, dated March 25, 2008; and Airbus Service Bulletin A310–57–2047, Revision 08, dated July 2, 2009; as applicable; to do the actions required by this AD, unless the AD specifies otherwise. Airbus Service Bulletin A310–57–2047 contains the following effective pages:

Page No.	Revision level shown on page	Date shown on page
1–7a, 26, 86, 88	08	July 2, 2009.
7b–21, 26, 29–31, 33, 35, 38, 39, 44, 45, 95, 96	07	March 14, 2008.
22–25, 37	06	July 13, 2004.
27, 28, 36, 47–56, 61–74	Original	February 26, 1991.
32, 34, 40–43, 59–60, 81–85, 87, 89–94	04	March 5, 1999.
46, 75–80	05	August 3, 2000.
57, 58	2	January 22, 1997.

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

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

(3) You may review copies of the service information at the FAA, Transport Airplane

Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on October 13, 2010.

John Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–26659 Filed 10–28–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management, Regulation, and Enforcement

30 CFR Parts 201, 202, 203, 204, 206, 207, 208, 210, 212, 217, 218, 219, 220, 227, 228, 229, 241, 243, and 290

Office of Natural Resources Revenue

30 CFR Parts 1201, 1202, 1203, 1204, 1206, 1207, 1208, 1210, 1212, 1217, 1218, 1219, 1220, 1227, 1228, 1229, 1241, 1243, and 1290

[Docket No. MMS–2010–MRM–0033]

RIN 1010–AD70

Reorganization of Title 30, Code of Federal Regulations

In rule document 2010–24721 beginning on page 61051 in the issue of Monday, October 4, 2010, make the following corrections:

PART 1206—PRODUCT VALUATION [CORRECTED]

1. On page 61070, in the table, in the first column, in the fourth row, "§ 1206.52(c)(2)" should read "§ 1206.52(c)(2)(i)".

2. On the same page, in the same table, in the same column, in the eleventh row, "§ 1206.53(e)(5) two times" should read "1206.52(e)(5) two times".

3. On the same page, in the same table, in the same column, in both the fifteenth and sixteenth rows, "§ 1206.52(c) introductory text" should read "§ 1206.53(c) introductory text".

4. On page 61071, in the table, in the third column, in the eighteenth row from the bottom of the page, "part 207" should read "part 1207."

5. On the same page, in the same table, in the same column, in the seventh row from the bottom of the page, the blank entry should read "ONRR."

6. On page 61072, in the table, in the third column, in the 22nd row, the blank entry should read "§ 1206.111".

7. On page 61073, in the table, in the third column, in the 16th row, "Associate Director" should read "Director".

PART 1208—SALE OF FEDERAL ROYALTY OIL [CORRECTED]

8. On page 61081, in the table, in the third column, in the first row, "§ 208.8(a)" should read "§ 1208.8(a)".

9. On the same page, in the same table, in the same column, in the fifth row, "§ 208.7(g)" should read "§ 1208.7(g)".

[FR Doc. C1–2010–24721 Filed 10–28–10; 8:45 am]

BILLING CODE 4310–MR–W–P

DEPARTMENT OF EDUCATION

34 CFR Part 600

RIN 1840–AD04

[Docket ID ED–2010–OPE–0012]

Program Integrity: Gainful Employment—New Programs

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations for Institutional Eligibility Under the Higher Education Act of 1965, as amended (HEA), to establish a process under which an institution applies for approval to offer an educational program that leads to gainful employment in a recognized occupation.

DATES: These regulations are effective July 1, 2011. However, affected parties do not have to comply with the information collection requirements in § 600.20(d) until the Department of Education publishes in the **Federal Register** the control number assigned by the Office of Management and Budget (OMB) to these information collection requirements. Publication of the control number notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: John Kolotos or Fred Sellers. Telephone: (202) 502–7762 or (202) 502–7502, or via the Internet at: *John.Kolotos@ed.gov* or *Fred.Sellers@ed.gov.*

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

Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to one of the contact persons listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: On July 26, 2010, the Secretary published a notice of proposed rulemaking (NPRM) for gainful employment issues in the **Federal Register** (75 FR 43616).

In the preamble to the NPRM, the Secretary discussed on pages 43617 through 43624 the major regulations proposed in that document to establish measures for determining whether certain programs lead to gainful employment in recognized occupations and the conditions under which those programs remain eligible for title IV, HEA program funds. In these final regulations, we address in a limited way only one issue from the proposed regulations: The provisions relating to the Secretary's approval of additional programs. The remaining issues will be addressed in final regulations that we intend to publish in the next few months.

Implementation Date of These Regulations

Section 482(c) of the HEA requires that regulations affecting programs under title IV of the HEA be published in final form by November 1 prior to the start of the award year (July 1) to which they apply. However, that section also permits the Secretary to designate any regulation as one that an entity subject to the regulation may choose to implement earlier and to specify the conditions under which the entity may implement the provisions early.

The Secretary has not designated any of the provisions in these final regulations for early implementation.

Analysis of Comments and Changes

These final regulations were developed through the use of negotiated rulemaking. Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under title IV of the HEA, the Secretary must obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. The negotiated rulemaking committee did not reach

consensus on the proposed regulations that were published on July 26, 2010. The Secretary invited comments on the proposed regulations by September 9, 2010.

Over 90,000 parties submitted comments, many of which were substantially similar. Of those comments several hundred pertained to the regulations in proposed § 668.7(g) regarding institutions' applications for and the Secretary's approval of additional programs. We have reviewed all of the comments related to this specific provision. In the following section we address those comments in the context of the limited nature of the changes we are making in these final regulations. Our analysis and the changes we are making in these regulations regarding additional programs follow.

Generally, we do not address minor, nonsubstantive changes, recommended changes that the law does not authorize the Secretary to make, or comments pertaining to operational processes. We also do not address comments pertaining to issues that do not relate to the additional programs provision or were not within the scope of the NPRM.

Additional Programs (§§ 600.10 and 600.20)

Comments: Several commenters generally supported the employer affirmation provisions in proposed § 668.7(g)(1)(iii), but made several recommendations. First, the commenters recommended that employers should specify the location of the anticipated job vacancies because pursuing a job across the country may be a reasonable choice for a graduate with a degree that provides training for a high-paying profession, but unreasonable for a graduate with a certificate or degree that provides training for a low-paying occupation. Second, the commenters stated that regulations should require the employer to identify for the employer's business the number of current or expected job vacancies and whether those vacancies are for full-time, part-time, or temporary jobs. Third, the commenters stated that the Department should specify that the affirmations apply to time periods related to the length of the program. For example, the affirmations for a new eight-month program should cover the period after the first group of students completes that program. Fourth, the commenters asked that the regulations be revised to prohibit an employer from providing an affirmation to several different institutions if the employer does not have jobs for graduates from all of those institutions. Finally, to ensure that employer affirmations are clear and uniform, the commenters presented a model form detailing the information an employer would provide for these purposes.

With regard to the remaining provisions in proposed § 668.7(g), some of the commenters suggested that any provisions limiting the establishment of new programs apply only to institutions whose programs are currently restricted or determined in the previous three years to be ineligible. The commenters believed this approach would provide a stronger incentive for institutions to keep their programs fully eligible and reduce the burden on institutions that have a strong record of preparing students for gainful employment.

Other commenters acknowledged the criticism that employer affirmations and attestations are often pro forma, but supported the regulations because seeking affirmation of demand could lead to closer connections with employers. The commenters recommended that institutions include, as part of the affirmation process, the number of students hired by an employer who attended a program and the percentage of students hired by the employer who completed that program.

Some commenters stated that the provisions in proposed § 668.7(g) place significant limitations on a cosmetology school's ability to grow and meet the demands of employers, which include not only positions in salons and spas, but also in marketing, distribution, and sales. The commenters were particularly concerned about how the Department would use five-year enrollment projections and employer affirmations in determining whether to approve a program or limit its growth. The commenters argued that if growth limitations are determined based on an institution's ability to document national and regional demand through employer affirmations, it would be unfair and unrealistic for the Department to rely only on affirmations from nonaffiliated employers. According to the commenters, many institutions work closely with salon owners and cosmetics manufacturers and distributors, and in some cases school owners have separate businesses making them affiliated employers. In addition, relying solely on nonaffiliated affirmations would eliminate one of the primary uses of program integrity boards which are designed to work in collaboration with institutions on the continued development and refinement of program expectations. The commenters believed that precluding affirmations from these sources is not only at cross-purposes with common business practices but also with guidance under other statutes, such as the Workforce Investment Act. The commenters concluded that the Department should withdraw or significantly revise the regulations to return the primary responsibility for aligning curricula with job demand back to accrediting agencies and States.

A number of commenters stated that the regulations for additional programs in proposed § 668.7(g) would hamper an institution's ability to develop, roll out, adapt, and improve new educational programs. For example, an institution that is developing a technical training program related to alternative fuels and green technologies would not be able to demonstrate projected job vacancies or expected demand, and it would be virtually impossible for such an employer to affirm that the program's curriculum aligns with recognized occupations. In addition, the commenters stated that the regulations were too vague and lacked clarity in key areas. Some of the commenters asked the Department to clarify or explain the following:

- In what ways the Department would consider employers qualified to determine educational quality or appropriate content of educational programs? The commenters contend that employers are not qualified to make these determinations.
- What would constitute a local employer when education is delivered through an online medium? The commenters believe that any national employer should suffice.
- What is an affiliated employer? Some commenters suggested that the institution may not have an ownership stake in the employer but may have a relationship with the employer along the lines of providing internships and externships to current and graduated students. Other commenters noted that an institution may have relationships or partnership arrangements with manufacturers, dealers, or other businesses and questioned whether these arrangements would preclude these businesses from providing affirmations.
- How many employer affirmations are needed and what is the extent of the required documentation?
- What criteria will be used to accept or reject a new program? If a program becomes ineligible under proposed § 668.7(f) but in a subsequent year satisfies the gainful employment provisions, would the program be treated as a new program under proposed § 668.7(g)?
- What are the metrics that would be used to align the size of the employers'

projected needs to the size of the program? Would an institution be required to obtain affirmations from employers proximate to each location at which a program is offered? In this case, will program approvals be location-specific or will an institution continue to be able to offer a program at its additional locations under the same Program Participation Agreement?

• How does the Department want institutions to determine projected enrollment and how will the Department use enrollment projections? Will an institution be able to update its enrollment projections?

Other commenters believed that enrollment projections have no bearing on whether a program provides gainful employment. Some of the commenters argued that rather than the Department attempting to control the number of individuals entering an occupation by limiting the number of students who enroll in a particular program, students should have the option of choosing a program so long as the program satisfies the standards of quality established by an accrediting agency. The commenters believed that the Department should not attempt to exert control over the educational options available to students in any capacity that exceeds ensuring program quality. In addition, the commenters objected to obtaining affirmations from nonaffiliated employers, particularly for online and graduate-level programs. With respect to online programs, the commenters contended that it would be overly burdensome to obtain affirmations from employers all over the country. With regard to graduate programs at institutions where most of the students enrolled in these programs are employed full-time, the commenters opined that employer affirmations are unnecessary because students taking these programs to advance their careers already understand the employment demands in their field. The commenters also believed that because section 496 of the HEA mandates that an accrediting agency may not be recognized by the Department unless the agency monitors the growth of programs at institutions that are experiencing significant enrollment growth, accrediting agencies are in a much better position than the Department to assess the impact of growth on an institution's operations and whether that growth impacts educational quality.

Another commenter asserted that the proposed additional program requirements violate 20 U.S.C. 1232a, which limits the amount of control or oversight that the Department may exercise over program curricula and other internal decisions made by schools. Moreover, the commenter believed that the HEA does not give the Department any authority to restrict a title IV, HEA program because the Department predicts it will be difficult for program graduates to secure employment.

One commenter asserted that neither the Department nor employers should be able to control new programs. Rather, the commenter said that programs should be allowed to prove their worth over time. The commenter concluded that innovation and growth will be severely hindered because the proposed regulations prejudge the efficacy of, and market for, new programs.

Many commenters opined that the Department should rely on data from the U.S. Department of Labor's Bureau of Labor Statistics (BLS), instead of employer affirmations, to evaluate expected demand for an additional program. The commenters argued that one benefit of using BLS data is that an institution has access to the data and can confirm the need for new programs before expending substantial funds to develop the programs. In addition, the commenters stated that the Department would receive an endless number of appeals if it determined the eligibility of programs through ad hoc employer recommendations and decisions by Department employees who lack expertise in the labor markets. The commenters recommended that the Department establish a process under which an institution could appeal a decision denying the eligibility of a new program, where the decision maker would have substantial expertise in curriculum development and analyzing labor trends and occupational needs.

A commenter stated that the proposed approval process for new programs was unfair and cumbersome and should be eliminated. Nevertheless, the commenter suggested that institutions offering new programs provide some form of expanded notice to the Department or the proposed process should be modified to apply only to an institution where over 50 percent of its programs are on a restricted status.

Several commenters believed the proposed approval process for new programs is costly, redundant, and unnecessary. Some of the commenters stated that State and accrediting agencies already require approval of new programs and reinforced that view by claiming that provisions in the NPRM that the Department published on June 18, 2010 (75 FR 34806) would expand State oversight. The commenters stated that one institution alone implemented scores of new programs over the last year and questioned how the Department would be able to review efficiently the anticipated number of programs with the speed required for institutions to function effectively. The commenters opined that requiring employer affirmations does not fall within any reasonable understanding of the statutory requirements that programs prepare students for gainful employment. Moreover, because the proposed regulations do not adequately explain how the process for employer affirmations will be conducted, how the Department would review and verify the affirmations, or how the Department will determine that a program is acceptable, the regulations would leave the Department with vague, arbitrary, and ultimate power to approve or deny a program. The commenters concluded that the Department would be the arbiter of program offerings, which would result in a system that does not best serve students or the national economic interests. Another commenter believed that employer affirmations are not needed because job vacancies in any market can be obtained easily online.

Another commenter opined that it is infeasible to obtain employer affirmations because no employer would affirm job openings for a specific number of a program's graduates. According to the commenter, doing so could amount to a commitment to hire and employers would not expose themselves to that liability. In addition, an employer's ability to foresee demand is limited and governed by economic conditions over which the employer has little or no control. The commenters concluded that requiring employer affirmations would effectively ban new programs leading to gainful employment. In addition, the commenters contended that the Department does not have the authority to impose such requirements.

Some commenters argued that because postbaccalaureate degree and certificate programs enable an individual to refine his or her expertise or obtain a specialization associated with a recognized occupation, the programs are not necessarily intended to train individuals to move into the job market or a basic career field. Therefore, according to the commenters, these programs should be excluded from the regulations. Along the same lines, other commenters suggested excluding graduate programs from the regulations because many students in these programs are working adults seeking to advance their careers. Alternatively, one of the commenters suggested that the Department consider exempting from

these regulations institutions with a history of low default rates.

One commenter believed that the number of program approvals, estimated in the NPRM at 650 over the first 3 years, is vastly underestimated. Based on the approvals that would be required at the commenter's institution, the commenter estimated that 6,000 or more would occur over that timeframe, presenting an unworkable burden to the Department. The commenter suggested that the Department use a different mechanism to address concerns that institutions may attempt to circumvent the regulations by renaming existing programs or by other means. At a minimum, the commenter recommended that institutions be allowed to bypass Department approval entirely if (1) BLS data show a demand in the region where the new program will be offered, or (2) programs representing 50 percent or more of the institution's total enrollment or programs representing 50 percent of its enrollment in the same job family, are not restricted or ineligible, or (3) the State in which the program will be offered requires a demand assessment.

Some commenters requested that programs training alternative oral health workforce professionals be exempted from the regulations. The commenters explained that to address access to oral health care, States and national organizations have implemented programs that create new members of the dental team. Some of these new workforce models require the completion of a degree program while others require the completion of a certificate program. Because these are new programs, it would be difficult to project growth in coming years. In addition, because these new workforce models aim to serve a constituency that has historically faced barriers to oral health care, prospective employers may not be in a position to adequately gauge the need for these new practitioners. The Children's Health Insurance Program Reauthorization Act, Public Law 111–3, requires the GAO to conduct a study and report on issues pertaining to the oral health of children, including "the feasibility and appropriateness of using qualified mid-level dental health practitioners, in coordination with dentists, to improve access for children to oral health services and public health overall." In addition, the Affordable Care Act, Public Law 111–148, authorized an alternative dental health provider demonstration project grant program for States. The commenters concluded that it would be contradictory for the Federal Government to provide funding to a State to create a program for a new oral health professional, and then deny prospective students access to title IV, HEA loans to matriculate in the program.

Another commenter suggested that the Department apply the two-year rule used for new institutions (a new institution must operate for two years before it applies to participate in the title IV, HEA programs) to institutions where a change in control results in control vested in a person or organization that does not have previous experience in administering the title IV, HEA programs. Under this approach, title IV, HEA funds would be capped at prechange levels for two years until the Department conducts a program review to assure that no substantial change in mission or educational outcomes has occurred as a result of the change in control. The commenter believed this approach would mitigate potential misalignment of the interests of a new owner and the educational and career expectations of the institution's students.

Many commenters noted that workforce education programs offered by community colleges and technical colleges are designed to meet local market needs. The commenters stated that as public institutions, these colleges undergo thorough oversight before adding new programs, including the use of business advisory committees. In addition, board, public agency, accrediting agency, and State approval is often required. Although the commenters believed that the additional regulations may be appropriate for some institutions, in their view the regulations are redundant and unnecessary for community colleges in light of this oversight and approval process.

Several commenters suggested that, to avoid confusion, the provisions in proposed § 668.7(g) belong more appropriately in § 600.10(c,) which currently addresses the approval of additional programs. The commenters recommended retaining the exception in § 600.10(c)(2), which allows an institution to add a program without obtaining approval from the Department if the program leads to a degree or prepares students for gainful employment in the same or related occupation as a program previously approved by the Department. The commenters believed that this exception should continue to apply so long as the previously approved program is not in a restricted status, as proposed under proposed § 668.7(e), or is not subject to debt warning disclosures under proposed § 668.7(d). In addition, the commenters believed that it would be impracticable for an institution to make the five-year enrollment projections under proposed § 668.7(g)(1)(ii), but did not offer any alternatives.

Some commenters expressed concern that the approval process for additional programs places a high burden of proof on institutions and would hamper the ability of colleges to respond to new and emerging workforce needs. In addition, the commenters requested that the Department clarify how the program approval requirements in proposed § 668.7(g) would apply to programs that institutions may now offer without approval under current § 600.10(c)(2). As noted previously, under that section an institution is not currently required to obtain the Department's approval of an additional program if the program leads to a degree or prepares students for gainful employment in the same or related occupation as a program previously approved by the Department. The commenters recommended that any expanded approval process apply only in cases where there is a record of poor performance sufficient to justify additional oversight. Along the same lines, other commenters recommended that any approval process for new programs should apply only to institutions with programs in a restricted or ineligible status.

Discussion: As a threshold matter, we disagree that the review and approval of an application from an institution to offer a new program is prohibited by 20 U.S.C. 1232a. That provision prevents the Department from exercising control over the content of a curriculum, program, or personnel at an institution. The HEA establishes requirements for institutions and programs to be eligible to participate in the title IV, HEA student financial aid programs, and the Department is charged with the responsibility to ensure that institutions participating in these programs have the financial strength and administrative capability needed to do so. In this context, the Department proposed in the NPRM and establishes in these final regulations a requirement that an institution must notify the Department of its intent to offer a new program and if necessary obtain the Department's approval to add a new program that is subject to the gainful employment regulations. Such review and approval do not constitute exercising control over the substance of the curriculum for that program, but rather involve a review of the institution and the institution's decision to offer a particular program. Furthermore, regardless of the Department's determination of a program's title IV, HEA program

eligibility, nothing under the HEA would prevent any institution from offering an ineligible program for which students would receive no title IV, HEA program assistance.

In general, we agree with the commenters who suggested that the program approval process for additional programs should apply, in some way, only to an institution with programs in a restricted or ineligible status or otherwise be based on the performance of the institution's gainful employment programs. This more focused approval process would not only reduce burden on institutions and the Department, but would enable institutions with good performance records to offer new programs more expediently. However, as noted in the **SUPPLEMENTARY INFORMATION** section of the preamble, these final regulations do not address the standards that will be used to gauge the performance of gainful employment programs and the consequences of not meeting those standards over time. Therefore, in these final regulations, the Department is establishing in § 600.20(d) requirements intended to remain in place until performance based standards can be implemented for approving additional programs using gainful employment measures along the lines suggested by the commenters.

Under these requirements that go into effect on July 1, 2011, the Department does not require employer affirmations or enrollment projections before approving a program. Instead, the Department will rely on a notice from the institution, submitted at least 90 days prior to the time when the institution plans to offer the new program, that provides a narrative explanation of why and how the new program was developed. Specifically, an institution must describe how it determined the need for the new program and how the program was designed to meet local market needs, or for an online program, regional or national market needs by, for example, consulting BLS data or State labor data systems or consulting with State workforce agencies. The institution also must describe how the program was reviewed or approved by, or developed in conjunction with, business advisory committees, program integrity boards, public or private oversight or regulatory agencies, and businesses that would likely employ graduates of the program. Additionally, the institution must include in its notice documentation that the program has been approved by its accrediting agency or is otherwise included in the institution's accreditation by its accrediting agency, or comparable documentation if the institution is a public postsecondary vocational institution approved by a recognized State agency for the approval of public postsecondary vocational education in lieu of accreditation. The notice from an institution should also include any information that describes how the program would be offered in connection with, or in response to, an initiative by a governmental entity, such as the oral health program with the Federal support described in the comments. Additionally, an institution must include in its notice a description of any wage analysis it may have performed, including any consideration of BLS wage data that is related to the new program.

Department staff will review the notices to identify instances where additional information may be needed about the program. Unless otherwise required to obtain approval for the new program, an institution that provides a notice may proceed with its plans to offer the new program based on its determination that the program is an eligible program that prepares students for gainful employment in a recognized occupation. If a concern or need for additional information about the new program is identified, the Department, under its authority in § 600.20(c)(1)(v), will send a letter to the institution alerting it that the Department must approve the program for title IV, HEA program purposes.

If the Department denies approval of an institution's new program, we will explain the basis for that decision and permit the institution to respond to our concerns and to request reconsideration of the denial. We note that even if the new program is not yet approved or is denied, an institution may still offer the program but students would be ineligible to receive title IV, HEA program funds to pay the costs of attendance associated with that program. In the case of a denial, the institution could later seek to add the program and provide additional information about students who completed it.

In deciding whether to seek additional information regarding a program, the Department will assess the institution's administration of its current programs, its capability to add the new program and provide the additional resources associated with it, and evaluate the institution's determination that the program should be offered. This review includes examining (1) the institution's demonstrated financial responsibility and administrative capability in operating existing programs, (2) whether the additional educational program is one of several new programs that would replace similar programs currently offered by the institution, as opposed to supplementing or expanding the current programs provided by the institution, (3) whether the number of additional educational programs being added is inconsistent with the institution's historic program offerings, growth, and operations, and (4) the sufficiency of the institution's process and determination to offer an additional educational program that leads to gainful employment in a recognized occupation.

In evaluating the institution's determination, we may consult external sources including the State, the institution's accrediting agency, BLS, and State resources, and may contact entities identified in the institution's notice. The Department may also require the institution to submit other information related to the new program.

When determining whether to deny a new program, the Department will consider factors (2) through (4) of the four factors described above. The Department will consider any tie-in with a governmental entity as an indication that the new program is intended to meet either current or expected employment demands. The Department may also consider BLS wage data related to the new program when reviewing information from an institution.

In general, for institutions with a history of good performance administering their programs, we believe that no approval will be needed for new programs under these requirements. However, the Department is concerned that some institutions might attempt to circumvent the proposed gainful employment standards (*see* the July 26, 2010 NPRM, 75 FR 43638–43640) by adding new programs before those standards would take effect. Although the proposed standards would evaluate most programs based on past performance, newly offered programs would not be subject to the standards for several years until they established an operating history. For example, an institution may seek to offer a significant number of new programs that would not be evaluated under the new standards for up to five years as a contingency plan in case its current programs are eliminated or restricted under measures that would be established in the final gainful employment regulations. We believe that such an approach by an institution should be examined closely to determine whether those new programs are substantially different and offer more potential benefits to its students.

With these regulations, the Department intends to mitigate the potential for this type of response by identifying such circumstances and requiring those new programs to be approved.

We believe this approach, based on a program development process articulated by a wide range of commenters and augmented by other information available to the Department, will provide some assurance that a new gainful employment program is needed at an institution and is responsive to student and employer needs. Moreover, we believe that these requirements correspond to the process an institution should follow in performing its due diligence responsibilities with respect to establishing an additional program.

The Department will continue to consider changes to these approval requirements as part of its consideration of the remaining issues presented in the gainful employment NPRM. Toward that end, we are continuing to consider carefully the suggestions to exclude postbaccalaureate certificate programs from the new program notice and approval process and ways to provide a more flexible approach for approving programs in new and emerging fields. In addition, we intend to address the questions raised on employer affirmations and enrollment projections in the subsequent final regulations for gainful employment.

Finally, we intend to implement administrative procedures that should mitigate the burden on institutions and the Department in submitting and reviewing notices for new programs. For example, the Department may allow an eligible institution to combine several new programs in one notice if the institution used the same, or similar, processes in developing those programs. An eligible institution may submit a notice for a new program that will be offered at multiple locations of the institution.

With regard to the concern that the number of program approvals, estimated in the NPRM at 650 over the first 3 years, is underestimated, we looked at the number of new program submissions to Federal Student Aid over the period from October 1, 2009 through September 30, 2010. Based on this data, we determined that a better estimate was a total of 1,919 new programs annually. Thus, over a three-year period the estimate would be 5,757 new programs. We note that the procedure in the regulations will result in most of those new programs being offered solely by providing notice to the Department, and that the separate approval process will be used for a much smaller number of those new programs.

Changes: We have revised § 600.10(c), as suggested by some of the commenters, to provide that an institution must provide at least 90 days advance notice to the Department of its plans to offer a new educational program that leads to gainful employment in a recognized occupation. Section 600.10(c)(1)(v) has also been revised to provide that the Secretary may notify an institution it is required to obtain approval for a new educational program. An institution does not have to provide notice to add a non-gainful-employment program under this section, except for direct assessment programs under 34 CFR 668.10 or unless required to do so by a provision in its Program Participation Agreement. Under revised § 600.10(c)(3), an institution that is required to obtain approval from the Department for a new program, but does not obtain the Department's approval or that incorrectly determines that an educational program is an eligible program for title IV, HEA program purposes, must repay to the Secretary all HEA program funds received by the institution for that educational program, and all the title IV, HEA program funds received by or on behalf of students who enrolled in that program.

We have amended § 600.20(d) to specify that an institution must provide notice at least 90 days in advance for a new educational program that leads to gainful employment in a recognized occupation. The notice must describe how the institution determined the need for the program and how the program was designed to meet local market needs, or for an online program, regional or national market needs. The institution also must describe in the notice how the program was reviewed or approved by, or developed in conjunction with, business advisory committees, program integrity boards, public or private oversight or regulatory agencies, and businesses that would likely employ graduates of the program. Additionally, the institution must include documentation that the program has been approved by its accrediting agency or is otherwise included in the institution's accreditation by its accrediting agency, or comparable documentation if the institution is a public postsecondary vocational institution approved by a recognized State agency for the approval of public postsecondary vocational education in lieu of accreditation. In addition, an institution must include in its notice a description of any wage analysis it may have performed, including any consideration of BLS wage data that is related to the new program. The institution must also provide the date of the first day of class of the new program.

Section 600.20(d) also provides that the Department may require the institution to obtain approval of the new program, and submit additional information about it. This section also describes the factors the Department will consider in evaluating the institution's application and specifies that if the Department denies an application from an institution to offer an additional program under § 600.10(c), the Department will explain in the denial how the institution failed to demonstrate the new program would likely lead to gainful employment in a recognized occupation. The institution will be permitted to respond to the concerns raised by the Department in the denial and request reconsideration of the denial.

As discussed in the *Paperwork Reduction Act of 1995* section of this preamble, we have corrected the OMB control number for § 600.20 to read "1845–0012".

Executive Order 12866

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether the regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the OMB. Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an "economically significant" rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order.

Pursuant to the terms of the Executive order, we have determined that this regulatory action will not have an annual effect on the economy of more than $100 million. Therefore, this action is not "economically significant" and subject to OMB review under section 3(f)(1) of Executive Order 12866.

Notwithstanding this determination, we have assessed the potential costs and benefits—both quantitative and qualitative—of this regulatory action and have determined that the benefits justify the costs.

Need for Federal Regulatory Action

Student debt is more prevalent and individual borrowers are incurring more debt than ever before. Twenty years ago, only one in six full-time freshmen at four-year public colleges and universities took out a Federal student loan; now more than half do. Today, nearly two-thirds of all graduating college seniors carry student loan debt. The availability of Federal student aid allows students to access postsecondary educational opportunities crucial to employment. For-profit postsecondary education along with occupationally specific training at other institutions has long played an important role in the nation's system of postsecondary education. Many of the institutions offering these programs have recently pioneered new approaches to enrolling, teaching, and graduating students. In recent years, enrollment in for-profit institutions has grown rapidly to 1.8 million students, nearly tripling between 2000 and 2008. This trend is promising and supports President Obama's goal of leading the world in the percentage of college graduates by 2020. This goal cannot be achieved without a healthy and productive for-profit sector of higher education. However, the programs offered by the for-profit sector must lead to measurable outcomes, or those programs will devalue postsecondary credentials through oversupply.

The proposed gainful employment regulations described in the NPRM published on July 26, 2010 received a record number of comments for a regulation proposed by the Department. The Department expects to publish the subsequent, final gainful employment regulations in early 2011 with an effective date of July 1, 2012. The provision related to approval of additional programs is addressed separately in these final regulations and will take effect on July 1, 2011. Specifically, these regulations establish interim requirements regarding the approval of gainful employment programs with initial enrollment beginning after July 1, 2011.

In general, for institutions with good records administering their programs, we believe that most new programs will satisfy these requirements and will not need to obtain approval of their programs from the Department. However, the Department is concerned that some institutions might attempt to circumvent the proposed gainful employment standards (*see* the July 26, 2010 NPRM, 75 FR 43638–43640) by adding new programs before those standards would take effect. Although the proposed standards would evaluate most programs based on past performance, newly offered programs would not be subject to the standards for several years until they established an operating history. For example, an institution may seek to offer a significant number of new programs that would not be evaluated under the new standards for up to five years as a contingency plan in case its current programs are eliminated or restricted under measures that would be used in the final gainful employment regulations. We believe that such an approach should be examined closely to determine whether those new programs are substantially different and offer more potential benefits to its students. With these regulations, the Department intends to mitigate the potential for this type of response. Accordingly, where an institution is required to obtain approval from the Department, the Department will consider the following factors when reviewing an institution's notice: (1) The institution's demonstrated financial responsibility and administrative capability in operating its existing programs, (2) whether the additional educational program is one of several new programs that would replace similar programs currently offered by the institution, as opposed to supplementing or expanding the current programs provided by the institution, (3) whether the number of additional educational programs being added is inconsistent with the institution's historic program offerings, growth, and operations, and (4) the sufficiency of the process used and determination made by the institution to offer an additional educational program that leads to gainful employment in a recognized occupation. The Department may decline to approve a new program based upon the last three of these four factors. The Department will also take into consideration other publicly available data, including data from the U.S. Department of Labor, about the job prospects for individuals that would complete the new programs.

If the Department denies an application from an institution to offer an additional program under § 600.10(c), the Department will explain in the denial how the institution failed to demonstrate the new program would likely lead to gainful employment in a recognized occupation. The institution will be permitted to respond to the concerns raised by the Department in the denial and request reconsideration of the denial. We also note that even if the new program is not yet approved or is denied, an institution may still offer the program but students would be ineligible to receive title IV, HEA program funds to pay the costs of attendance associated with that program. In the case of a denial, the institution could later seek to add the program and provide additional information about students who completed it.

We intend to establish performance-based requirements in subsequent regulations early in 2011 for approving additional programs. Until those subsequent regulations take effect, institutions must comply with the interim requirements in these regulations. As discussed elsewhere in this preamble, we will continue to consider whether to exclude certain programs from these approval requirements as a part of our consideration of the remaining issues presented in the gainful employment NPRM. Toward that end, we are continuing to consider carefully the suggestions to exclude postbaccalaureate certificate programs from the new program approval process and ways to provide a more flexible approach for approving programs in new and emerging fields. In addition, we intend to address the questions raised on employer affirmations and enrollment projections in the context of the subsequent final regulations for gainful employment in early 2011.

As described earlier, we also intend to implement administrative procedures that mitigate the burden on institutions and the Department in submitting and reviewing information for new programs. For example, the Department may allow an institution to combine several new programs in one notification if the institution used the same, or similar, processes in developing those programs. Further, an eligible institution may submit a notice for a new program that will be offered at multiple locations of the institution.

A description of the additional programs proposed regulations, the reasons for adopting them, and an analysis of the regulations' effects was presented in the NPRM published on July 26, 2010. This updated Regulatory Impact Analysis describes changes considered in response to comments received about the additional programs provision.

Regulatory Alternatives Considered

In the NPRM published on July 26, 2010, the Department proposed requirements for institutions to establish additional programs subject to the gainful employment regulations. In that regard, the NPRM provided that, as part of an institution's application to establish an additional program, the institution would need to provide (1) the projected enrollment for the program for the next five years for each location of the institution that will offer the additional program, (2) documentation from employers not affiliated with the institution that the program's curriculum aligns with recognized occupations at those employers' businesses and that there are projected job vacancies or expected demand for those occupations at those businesses, and (3) if the additional program constitutes a substantive change, documentation of the approval of the substantive change from its accrediting agency.

As described elsewhere in this preamble, we received a range of comments related to this provision. Some were supportive of the proposed regulations but had specific recommendations for the form and content of the affirmations from unaffiliated employers. Other commenters requested clarification about how many affirmations would be needed and what is considered a local employer and how a local employer would be determined with respect to online programs or programs whose students pursue jobs nationally. Commenters also asked us to clarify how the proposed requirement that the employer be unaffiliated with the institution would affect the valuable internship and externship relationships between institutions and employers, and what metrics would be used to align an employer's projected needs to the size of the program. Other commenters expressed concern that the proposed provisions would stifle an institution's ability to establish innovative programs for emerging fields in anticipation of future job opportunities. Several commenters suggested that the proposed provision interfered with curriculum development and internal decisions of schools and would undermine the close relationships programs subject to the proposed gainful employment regulations develop with local employers.

In general, we agree with commenters who suggested that the program approval process for additional programs should apply only to an institution with programs in a restricted or ineligible status. This would relieve the burden on institutions and the Department, and would allow institutions with a record of strong performance to establish new programs more expediently. However, we are not addressing in these regulations the standards that will be used to gauge the performance of gainful employment programs and the consequences of not meeting those standards. These regulations address in only a very limited manner the provisions relating to the Secretary's approval of additional educational programs. Modifications to make the approval process for additional programs performance based will be addressed in subsequent regulations.

Under the requirements established in these regulations, the Department will instead rely on a notice from the institution submitted at least 90 days prior to the time when the institution plans to offer the new program that provides a narrative explanation of why and how the new program was developed. Specifically, an institution must describe how it determined the need for the new program and how the program was designed to meet local market needs, or for an online program, regional or national market needs by, for example, consulting BLS data or State labor data systems or consulting with State workforce agencies. The institution also must describe how the program was reviewed or approved by, or developed in conjunction with, business advisory committees, program integrity boards, public or private oversight or regulatory agencies, and businesses that would likely employ graduates of the program. Additionally, the institution must include in its notice documentation that the program has been approved by its accrediting agency or is otherwise included in the institution's accreditation by its accrediting agency, or comparable documentation if the institution is a public postsecondary vocational institution approved by a recognized State agency for the approval of public postsecondary vocational education in lieu of accreditation. The notice from an institution should also include any information that describes how the program would be offered in connection with, or in response to, an initiative by a governmental entity, such as the oral health program with the Federal support described in the comments. Additionally, an institution must include in its notice a description of any wage analysis it may have performed, including any consideration of BLS wage data that is related to the new program. Based on this information, the Department will determine whether approval is required, and if required the Department will consider the notice as an application. Under the regulations, an institution does not have to apply for approval to add a program under § 600.20 unless (a) it has been directed to do so by the Department under § 600.20(c)(5), (b) it is a direct assessment programs under 34 CFR 668.10, or (c) it is required to do so by a provision in its Program Participation Agreement.

As discussed in the *Paperwork Reduction Act of 1995* section of this preamble, the Department estimates that institutions will submit notifications for approximately 914 new nondegree programs and 1,005 new degree programs annually under the process set forth in these final regulations, or a total of 5,757 over a three-year period.

The effect of these changes on the cost estimates prepared for and discussed in the *Regulatory Impact Analysis* of the NPRM is discussed in the *Costs* section of this *Regulatory Impact Analysis.*

Benefits

We believe the approach set forth in these regulations, based on a program development process articulated by commenters representing both the public and private sectors, provides some assurance that new gainful employment programs are needed and responsive to student and employer needs. This provision results in no net costs to the government over 2011–2015. The administrative expenses associated with the approval process will be covered by the Department's existing discretionary funds.

Costs

The process established by these regulations is based on institutional practices described in comments received from representatives of public and private institutions. Accordingly, many entities wishing to continue to participate in the title IV, HEA programs have already absorbed many of the administrative costs related to implementing these regulations, and additional costs would primarily be due to documenting the program development process. Other institutions may have to establish a program development process, but the regulations allow flexibility in meeting the core requirements.

In assessing the potential impact of these regulations, the Department recognizes that the provision may increase workload for some program participants. This additional workload is discussed in more detail under the

Paperwork Reduction Act of 1995 section of this preamble. Additional workload would normally be expected to result in estimated costs associated with either the hiring of additional employees or opportunity costs related to the reassignment of existing staff from other activities. In total, these changes are estimated to increase burden on entities participating in the Federal Student Assistance programs by 3,591 hours.

As detailed in the *Paperwork Reduction Act of 1995* section of this preamble, the additional paperwork burden is attributable to the process of documenting and submitting a description of how the institution determined to develop a new program. We estimate that this process would take institutions 3,591 hours and the costs would be $91,032 under information collection 1845–0012. In response to comments that the regulations would be costly, we reviewed the wage rates for more recent information and the share of work performed by office workers and management and professional staff. This increased the wage rate for gainful employment related matters from $20.71 to $25.35.

Because data underlying many of these burden estimates was limited, in the NPRM, the Department requested comments and supporting information for use in developing more robust estimates. In particular, we asked institutions to provide detailed data on actual staffing and system costs associated with implementing the regulations regarding additional programs. Some commenters believed the estimate of 650 new programs annually was low and suggested 6,500 per year was a more reasonable figure. The Department reviewed internal data sources and estimated that 1,919 programs would be reviewed annually, or a total of 5,757 over a three-year period. As discussed above, we also reviewed the wage rates for more recent data and the share of work allocated to managerial and professional staff.

Net Budget Impacts

The regulations are estimated to have a net budget impact of $0.0 million over FY 2011–2015. 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.)

These estimates were developed using the Office of Management and Budget's Credit Subsidy Calculator. This calculator will also be used for reestimates of prior-year costs, which will be performed each year beginning in FY 2009. The OMB 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, however, 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 on 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: Two-year and less proprietary institutions; two-year and less public and private nonprofit institutions; freshmen and sophomores at four-year institutions; juniors and 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.

The Department estimates no budgetary impact for these regulations as there is no data indicating that the provisions will have any impact on the volume or composition of Federal student aid programs.

Assumptions, Limitations, and Data Sources

Impact estimates provided in the preceding section reflect a prestatutory baseline in which the Higher Education Opportunity Act changes implemented in these regulations do not exist. Costs have been quantified for five years.

In developing these estimates, a range of data sources were used, including data from the National Student Loan Data System, and operational and financial data from Department of Education systems. Data from other sources, such as the U.S. Census Bureau or the U.S. Bureau of Labor Statistics, were also used. Data on administrative burden at participating institutions are extremely limited.

Elsewhere in this **SUPPLEMENTARY INFORMATION** section we identify and explain burdens specifically associated with information collection requirements. See the heading *Paperwork Reduction Act of 1995.*

Accounting Statement

As required by OMB Circular A–4 (available at *http://www.Whitehouse.gov/omb/Circulars/a004/a-4.pdf*), in Table 2, we have prepared an accounting statement showing the classification of the estimated 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 1—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES

[In millions]

Category	Transfers
Annualized Monetized Costs	$0.1. Cost of compliance with paperwork requirements.
Annualized Monetized Transfers	$0.

TABLE 1—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES—Continued

[In millions]

Category	Transfers
From Whom To Whom?	Federal Government To Student Loan Borrowers.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations would not have a significant economic impact on a substantial number of small entities. These regulations would affect institutions that participate in title IV, HEA programs and loan borrowers. The definition of "small entity" in the Regulatory Flexibility Act encompasses "small businesses," "small organizations," and "small governmental jurisdictions." The definition of "small business" comes from the definition of "small business concern" under section 3 of the Small Business Act as well as regulations issued by the U.S. Small Business Administration (SBA). The SBA defines a "small business concern" as one that is "organized for profit; has a place of business in the U.S.; operates primarily within the U.S. or makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor * * *" "Small organizations," are further defined as any "not-for-profit enterprise that is independently owned and operated and not dominant in its field." The definition of "small entity" also includes "small governmental jurisdictions," which includes "school districts with a population less than 50,000."

Data from the Integrated Postsecondary Education Data System (IPEDS) indicate that roughly 4,379 institutions participating in the Federal student assistance programs meet the definition of "small entities." The following table provides the distribution of institutions and students by revenue category and institutional control.

Revenue category	Public		Private NFP		Proprietary		Tribal	
	Number of schools	Number of students	Number of schools	Number of students	Number of schools	Number of students	Number of schools	Number of students
$0 to $500,000	43	2,124	103	13,208	510	38,774	.....	.....
$500,000 to $1 million	44	7,182	81	9,806	438	61,906	1	137
$1 million to $3 million	98	29,332	243	65,614	745	217,715	3	555
$3 million to $5 million	75	65,442	138	60,923	303	182,362	.....	.....
$5 million to $7 million	49	73,798	99	62,776	224	185,705	5	2,525
$7 million to $10 million	78	129,079	110	84,659	228	235,888	9	4,935
$10 million and above	*1,585*	*18,480,000*	*1,067*	*4,312,010*	*383*	*1,793,951*	*14*	*18,065*
Total	1,972	18,786,957	1,841	4,608,996	2,831	2,716,301	32	26,217

Approximately two-thirds of these institutions are for-profit schools subject to these final regulations. Other affected small institutions include small community colleges and tribally controlled schools. For these institutions, the program development documentation requirements imposed under the regulations could impose some new costs as described below. The impact of the regulations on individuals is not subject to the Regulatory Flexibility Act.

As detailed in the *Paperwork Reduction Act of 1995* section of these final regulations, the regulations will require institutions to have and to document a process for establishing additional programs for programs subject to the gainful employment regulations that begin enrolling students after July 1, 2011. There are no explicit growth limitations or employer verification requirements. The estimated total hours, costs, and requirements applicable to small entities from these provisions on an annual basis are 2,370 hours and $60,081, of which $53,104 is associated with the initial submission and $10,571 is associated with institutions that submit additional information and work with the Department on a program subject to denial. We estimate that approximately 350 of the institutions submitting programs in the interim period will be small institutions, resulting in estimated burden of 7 hours and $152 per small institution for initial submission of material. For the smaller number of institutions with programs that are initially rejected, there would be additional costs to submit additional paperwork and respond to the Department's denial. We estimate that 10 percent of submissions would go through this process, resulting in an additional 12 hours and $302 per institution. In response to comments that the regulations would be costly, we reviewed the wage rates for more recent information and the share of work performed by office workers and management and professional staff. This increased the wage rate for gainful employment related matters from $20.71 to $25.35.

No alternative provisions were considered that would target small institutions with exemptions or additional time for compliance as this provision builds on existing industry practices. In the NPRM, the Secretary invited comments from small institutions and other affected entities as to whether they believed the proposed changes would have a significant economic impact on them and requested evidence to support that belief. The comments received related to this provision were described in the *Analysis of Comments and Changes* section of this preamble.

Paperwork Reduction Act of 1995

Section 600.20(d) in these final regulations contains information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department has submitted a copy of this section to OMB for its review. However, affected parties do not have to comply with the information collection requirements in § 600.20(d) until the Department of Education publishes in the **Federal Register** the control number assigned by

the Office of Management and Budget (OMB) to these information collection requirements. Publication of the control number notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1995.

Section 600.20—Application Procedures for Establishing, Reestablishing, Maintaining, or Expanding Institutional Eligibility and Certification

The final regulations require institutions to apply to the Department for approval to add new educational programs that are subject to the gainful employment regulations. The Department will review the institution's narrative application that explains why and how the new program was designed to meet local market needs or in the case of an online program, regional or national market needs. The institution's notification must indicate how the program was reviewed or approved by, or developed in conjunction with business advisory committees, program integrity boards, public or private oversight or regulatory agencies, and businesses that would employ graduates of the new program. Because this regulatory approach parallels current practice, the only increase in burden relates to the development of the narrative, which will be a relatively small additional effort. We did not include the other tasks, analysis, and burden associated with activities which, separate and apart from this collection, are already part of an institution's due diligence in determining whether to offer a new program.

In addition, we expect that an institution developing multiple new programs will combine its submissions into a single notice for all the new programs, thus reducing the burden associated with creating and submitting the narrative.

Our estimate of increased burden is divided into two components. The first component is the burden associated with providing notice of nondegree programs that train students for gainful employment in a recognized occupation. The second component is the burden associated with providing notice of degree programs that train students for gainful employment in a recognized occupation, consistent with § 668.8(d).

We estimate that annually there will be 914 new nondegree programs that train students for gainful employment in a recognized occupation submitted by notice. We estimate that there will be 267 new nondegree programs submitted by proprietary institutions and that the average amount of time to collect the information and submit it to the Department will be 2.5 hours per submission, which will increase burden by 668 hours under OMB 1845–0012.

We estimate that there will be 110 new nondegree programs submissions by private nonprofit institutions and that the average amount of time to collect the information and submit it to the Department will be 2.5 hours per submission, which will increase burden by 275 hours under OMB 1845–0012.

We estimate that there will be 537 new nondegree programs submissions by public institutions and that the average amount of time to collect the information and submit it to the Department will be 2.5 hours per submission, which will increase burden by 1,343 hours under OMB 1845–0012.

Collectively, we estimate that the annual burden associated with the submission of nondegree programs will increase by 2,286 hours under OMB 1845–0012. We estimate that annually there will be 1,005 new degree programs that train students for gainful employment in a recognized occupation submitted to the Department. Consistent with these final regulations and the requirements of § 668.8(d), all new degree programs at proprietary institutions will have to submit their narrative descriptions of why and how the institution determined to offer their new program or programs, as well as send us documentation of any accrediting agency or State agency approvals. We estimate that there will be 1,005 new degree programs for which proprietary institutions will submit notifications on an annual basis. Of the 1,005 new degree programs, we estimate that 335 will be included in individual notifications and that the average amount of time to collect the information and submit it to the Department will be 1.75 hours per submission, which will increase burden by 586 hours under OMB 1845–0012. Of the remaining 670 new degree programs, we estimate that these will be included in grouped submissions averaging five new programs in each group, resulting in 134 submissions (670 divided by 5). We estimate that the average amount of time to collect this information and submit it to the Department will be 2.25 hours per submission, which will increase burden by 302 hours under OMB 1845–0012.

Collectively, we estimate that the annual burden associated with the submission of notifications for new degree programs will increase by 888 hours under OMB 1845–0012.

The final regulations in § 600.20(d) also provide a process by which the Department will contact the institution prior to denying a new program notification to identify concerns and permit the institution to supplement its notification with additional information.

We estimate that of the 914 new nondegree program submissions that there will be questions regarding 92 of the new programs where those institutions will have the opportunity to provide additional information to the Secretary. We estimate that of the 267 new nondegree programs submitted by proprietary institutions that in 27 of those submissions, upon contact from the Department, the institution will submit additional information. We estimate the collection and reporting of the additional information, on average to take 3 hours per submission, which will increase burden by 81 hours under OMB 1845–0012.

We estimate that of the 110 new nondegree programs submitted by private not-for profit institutions that in 11 of those submissions, upon contact from the Department, the institution will submit additional information. We estimate the collection and reporting of the additional information, on average to take 3 hours per submission, which will increase burden by 33 hours under OMB 1845–0012.

We estimate that of the 537 new nondegree program submitted by public institutions that in 54 of those submissions, upon contact from the Department, the institution will submit additional information. We estimate the collection, submission, and reporting of the additional information, on average to take 3 hours per submission, which will increase burden by 162 hours under OMB 1845–0012.

Collectively, we estimate that the annual burden associated with the submission of additional information after being contacted by the Department regarding the new nondegree programs will increase by 276 hours under OMB 1845–0012.

We estimate that of the 1,005 new degree program submissions that there will be questions raised by the Department regarding 34 individual program submissions and that the average amount of time to collect and to report the additional information will be 3 hours per submission, which will increase burden by 102 hours under OMB 1845–0012. Of the remaining 67 new degree programs that are submitted as multiple program submissions (averaging 5 new programs per submission), we estimate that there will be 13 multiple submissions (67 divided by 5) where questions will be raised by the Department and that the average amount of time to collect and to report

the additional information will be 3 hours per submission, which will increase burden by 39 hours under OMB 1845–0012.

Collectively, we estimate that the annual burden associated with the submission of additional information after being contacted by the Department regarding the new degree programs will increase by 141 hours under OMB 1845–0012.

In total, the final regulations in § 600.20(d) will increase burden by 3,591 hours under OMB 1845–0012.

[Note: The prior OMB designation for all new degree and nondegree programs submitted for approval was OMB 1840–0098 which was then transposed to OMB 1845–0098, but is corrected in these final regulations to OMB 1845–0012.]

COLLECTION OF INFORMATION

Regulatory section	Information collection	Collection
600.20(d)	This regulatory section requires institutions to apply to the Department for approval to add new programs that are subject to the gainful employment regulations. Institutions will describe how the institution determined the need for the program and how the program was designed to meet local market needs, or for an online program, regional or national market needs. In addition, the institution will describe how the program was reviewed or approved by, or developed in conjunction with outside entities such as, but not limited to, business advisory committees, program integrity boards, and public or private oversight or regulatory agencies. The institution will also submit under these final regulations copies of documentation that the program has been approved by its accrediting agency or recognized State agency. The Department will contact institutions before it denies a new program and identify areas of concern and permit the institution to supplement its notification with additional information.	OMB 1845–0012. The burden will increase by 3,591 hours.

Intergovernmental Review

These programs are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, and based on our own review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF, you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index/html.*

(Catalog of Federal Domestic Assistance: 84.007 FSEOG; 84.032 Federal Family Education Loan Program; 84.033 Federal Work-Study Program; 84.037 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 LEAP; 84.268 William D. Ford Federal Direct Loan Program; 84.376 ACG/SMART; 84.379 TEACH Grant Program)

List of Subjects in 34 CFR Part 600

Colleges and universities, Foreign relations, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

Dated: October 26, 2010.

Arne Duncan,

Secretary of Education.

■ For the reasons discussed in the preamble, the Secretary amends part 600 of title 34 of the Code of Federal Regulations as follows:

■ 1. The authority citation for part 600 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1088, 1091, 1094, 1099b, and 1099c, unless otherwise noted.

■ 2. Section 600.10(c) is revised to read as follows:

§ 600.10 Date, extent, duration, and consequence of eligibility.

* * * * *

(c) *Subsequent additions of educational programs.* (1) An eligible institution must notify the Secretary at least 90 days before the first day of class when it intends to add an educational program that prepares students for gainful employment in a recognized occupation, as provided under 34 CFR 668.8(c)(3) or (d). The institution may proceed to offer the program described in its notice, unless the Secretary advises the institution that the additional educational program must be approved under § 600.20(c)(1)(v). Except as provided for direct assessment programs under 34 CFR 668.10, or pursuant to a requirement included in an institution's Program Participation Agreement under 34 CFR 668.14, the institution does not have to apply for approval to add any other type of educational program.

(2) For purposes of paragraph (c)(1) of this section, an additional educational program is—

(i) A program with a Classification of Instructional Programs (CIP) code under the taxonomy of instructional program classifications and descriptions developed by the U.S. Department of Education's National Center for Education Statistics that is different from any other program offered by the institution;

(ii) A program that has the same CIP code as another program offered by the institution but leads to a different degree or certificate; or

(iii) A program that the institution's accrediting agency determines to be an additional program.

(3) An institution must repay to the Secretary all HEA program funds received by the institution for an educational program, and all the title IV, HEA program funds received by or on behalf of students who enrolled in that program if the institution—

(i) Fails to obtain the Secretary's approval to offer an additional educational program that prepares students for gainful employment in a recognized occupation as provided under paragraph (c)(1) of this section; or

(ii) Incorrectly determines that an educational program that is not subject to approval under paragraph (c)(1) of

this section is an eligible program for title IV, HEA program purposes.

* * * * *

■ 3. Section 600.20 is amended by:
■ A. Revising the section heading.
■ B. Revising paragraph (c)(1)(v).
■ C. Revising paragraph (d).
■ D. In the OMB control number parenthetical that appears after paragraph (h), removing the number "1845–0098" and adding, in its place, the number "1845–0012".

The revisions read as follows:

§ 600.20 Notice and application procedures for establishing, reestablishing, maintaining, or expanding institutional eligibility and certification.

* * * * *

(c) * * *

(1) * * *

(v) The Secretary notifies, or has notified, the institution that it must apply for approval of an additional educational program or a location under § 600.10(c).

* * * * *

(d) *Notice and application.* (1) *Notice and application procedures.* (i) To satisfy the requirements of paragraphs (a), (b), and (c) of this section, an institution must notify the Secretary of its intent to offer an additional educational program, or provide an application to expand its eligibility, in a format prescribed by the Secretary and provide all the information and documentation requested by the Secretary to make a determination of its eligibility and certification.

(ii)(A) An institution that notifies the Secretary of its intent to offer an educational program under paragraph (c)(3) of this section must ensure that the Secretary receives the notice described in paragraph (d)(2) of this section at least 90 days before the first day of class of the educational program.

(B) An institution that submits a notice in accordance with paragraph (d)(1)(ii)(A) of this section is not required to obtain approval to offer the additional educational program unless the Secretary alerts the institution at least 30 days before the first day of class that the program must be approved for title IV, HEA program purposes. If the Secretary alerts the institution that the additional educational program must be approved, the Secretary will treat the notice provided about the additional educational program as an application for that program.

(C) If an institution does not provide timely notice in accordance with paragraph (d)(1)(ii)(A) of this section, the institution must obtain approval of the additional educational program from the Secretary for title IV, HEA program purposes.

(D) If an additional educational program is required to be approved by the Secretary for title IV, HEA program purposes under paragraph (d)(1)(ii)(B) or (C) of this section, the Secretary may grant approval, or request further information prior to making a determination of whether to approve or deny the additional educational program.

(E) When reviewing an application under paragraph (d)(1)(ii)(B) of this section, the Secretary will take into consideration the following:

(*1*) The institution's demonstrated financial responsibility and administrative capability in operating its existing programs.

(*2*) Whether the additional educational program is one of several new programs that will replace similar programs currently provided by the institution, as opposed to supplementing or expanding the current programs provided by the institution.

(*3*) Whether the number of additional educational programs being added is inconsistent with the institution's historic program offerings, growth, and operations.

(*4*) Whether the process and determination by the institution to offer an additional educational program that leads to gainful employment in a recognized occupation is sufficient.

(F)(*1*) If the Secretary denies an application from an institution to offer an additional educational program, the denial will be based on the factors described in paragraphs (d)(1)(ii)(E)(2), (3), and (4) of this section, and the Secretary will explain in the denial how the institution failed to demonstrate that the program is likely to lead to gainful employment in a recognized occupation.

(*2*) If the Secretary denies the institution's application to add an additional educational program, the Secretary will permit the institution to respond to the reasons for the denial and request reconsideration of the denial.

(2) *Notice format.* An institution that notifies the Secretary of its intent to offer an additional educational program under paragraph (c)(3) of this section must at a minimum—

(i) Describe in the notice how the institution determined the need for the program and how the program was designed to meet local market needs, or for an online program, regional or national market needs. This description must contain any wage analysis the institution may have performed, including any consideration of Bureau of Labor Statistics data related to the program;

(ii) Describe in the notice how the program was reviewed or approved by, or developed in conjunction with, business advisory committees, program integrity boards, public or private oversight or regulatory agencies, and businesses that would likely employ graduates of the program;

(iii) Submit documentation that the program has been approved by its accrediting agency or is otherwise included in the institution's accreditation by its accrediting agency, or comparable documentation if the institution is a public postsecondary vocational institution approved by a recognized State agency for the approval of public postsecondary vocational education in lieu of accreditation; and

(iv) Provide the date of the first day of class of the new program.

* * * * *

[FR Doc. 2010–27395 Filed 10–28–10; 8:45 am]

BILLING CODE 4000–01–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2010–34, et al.]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is updating the postal product lists. This action reflects the disposition of recent dockets, as reflected in Commission orders, and a publication policy adopted in a recent Commission order. The referenced policy assumes periodic updates. The updates are identified in the body of this document. The product lists, which are re-published in their entirety, include these updates.

DATES: *Effective Date:* October 29, 2010.

Applicability Dates: September 29, 2010 (Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1); September 30, 2010 (Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 (Multi-Service Agreements).

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at *stephen.sharfman@prc.gov* or 202–789–6820.

SUPPLEMENTARY INFORMATION: This document identifies recent updates to the product lists, which appear as 39 CFR appendix A to subpart A of part

3020—Mail Classification Schedule.[1] Publication of updated product lists in the **Federal Register** is consistent with the Postal Accountability and Enhancement Act (PAEA) of 2006.

Authorization. The Commission process for periodic publication of updates was established in Order No. 445, April 22, 2010.

Changes. Since publication of the product lists in the **Federal Register** on August 31, 2010 (75 FR 53216), the following additions to the competitive product list have been made:

1. Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1, added September 29, 2010 (Order No. 546);

2. Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 (Multi-Service Agreements 1), added September 30, 2010 (Order No. 549);

Updated product lists. The referenced changes to the product lists are included in the product lists following the Secretary's signature.

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure; Postal Service.

By the Commission.

Shoshana M. Grove,

Secretary.

■ For the reasons discussed in the preamble, the Postal Regulatory Commission amends chapter III of title 39 of the Code of Federal Regulations as follows:

PART 3020—PRODUCT LISTS

■ 1. The authority citation for part 3020 continues to read as follows:

Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

■ 2. Revise Appendix A to Subpart A of Part 3020—Mail Classification Schedule to read as follows:

Appendix A to Subpart A of Part 3020—Mail Classification Schedule

Part A—Market Dominant Products

1000 Market Dominant Product List

First-Class Mail
- Single-Piece Letters/Postcards
- Bulk Letters/Postcards
- Flats
- Parcels
- Outbound Single-Piece First-Class Mail International
- Inbound Single-Piece First-Class Mail International

Standard Mail (Regular and Nonprofit)
- High Density and Saturation Letters
- High Density and Saturation Flats/Parcels
- Carrier Route
- Letters
- Flats
- Not Flat-Machinables (NFMs)/Parcels

Periodicals
- Within County Periodicals
- Outside County Periodicals

Package Services
- Single-Piece Parcel Post
- Inbound Surface Parcel Post (at UPU rates)
- Bound Printed Matter Flats
- Bound Printed Matter Parcels
- Media Mail/Library Mail

Special Services
- Ancillary Services
- International Ancillary Services
- Address Management Services
- Caller Service
- Change-of-Address Credit Card Authentication
- Confirm
- Customized Postage
- International Reply Coupon Service
- International Business Reply Mail Service
- Money Orders
- Post Office Box Service
- Stamp Fulfillment Services

Negotiated Service Agreements
- HSBC North America Holdings Inc. Negotiated Service Agreement
- Bookspan Negotiated Service Agreement
- Bank of America Corporation Negotiated Service Agreement
- The Bradford Group Negotiated Service Agreement
- Inbound International
- Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Market Dominant Services (MC2010–12 and R2010–2)
- The Strategic Bilateral Agreement Between United States Postal Service and Koninklijke TNT Post BV and TNT Postl pakketservice Benelux BV, collectively "TNT Post" and China Post Group—United States Postal Service Letter Post Bilateral Agreement (MC2010–35, R2010–5 and R2010–6)

Market Dominant Product Descriptions

First-Class Mail
- Single-Piece Letters/Postcards
- Bulk Letters/Postcards
- Flats
- Parcels
- Outbound Single-Piece First-Class Mail International
- Inbound Single-Piece First-Class Mail International

Standard Mail (Regular and Nonprofit)
- High Density and Saturation Letters
- High Density and Saturation Flats/Parcels
- Carrier Route
- Letters
- [Reserved for Product Description]
- Flats
- Not Flat-Machinables (NFMs)/Parcels

Periodicals
- Within County Periodicals
- Outside County Periodicals

Package Services
- Single-Piece Parcel Post
- Inbound Surface Parcel Post (at UPU rates)
- Bound Printed Matter Flats
- Bound Printed Matter Parcels
- Media Mail/Library Mail

Special Services
- Ancillary Services
- Address Correction Service
- Applications and Mailing Permits
- Business Reply Mail
- Bulk Parcel Return Service
- Certified Mail
- Certificate of Mailing
- Collect on Delivery
- Delivery Confirmation
- Insurance
- Merchandise Return Service
- Parcel Airlift (PAL)
- Registered Mail
- Return Receipt
- Return Receipt for Merchandise
- Restricted Delivery
- Shipper-Paid Forwarding
- Signature Confirmation
- Special Handling
- Stamped Envelopes
- Stamped Cards
- Premium Stamped Stationery
- Premium Stamped Cards
- International Ancillary Services
- International Certificate of Mailing
- International Registered Mail
- International Return Receipt
- International Restricted Delivery
- Address List Services
- Caller Service
- Change-of-Address Credit Card Authentication
- Confirm
- International Reply Coupon Service
- International Business Reply Mail Service
- Money Orders
- Post Office Box Service
- [Reserved for Product Description]

Negotiated Service Agreements
- HSBC North America Holdings Inc. Negotiated Service Agreement
- Bookspan Negotiated Service Agreement
- Bank of America Corporation Negotiated Service Agreement
- The Bradford Group Negotiated Service Agreement

Part B—Competitive Products

2000 Competitive Product List

Express Mail
- Express Mail
- Outbound International Expedited Services
- Inbound International Expedited Services
- Inbound International Expedited Services 1 (CP2008–7)
- Inbound International Expedited Services 2 (MC2009–10 and CP2009–12)
- Inbound International Expedited Services 3 (MC2010–13 and CP2010–12)

Priority Mail
- Priority Mail
- Outbound Priority Mail International
- Inbound Air Parcel Post (at non-UPU rates)
- Royal Mail Group Inbound Air Parcel Post Agreement
- Inbound Air Parcel Post (at UPU rates)

Parcel Select

Parcel Return Service

International
- International Priority Airlift (IPA)
- International Surface Airlift (ISAL)
- International Direct Sacks—M-Bags
- Global Customized Shipping Services
- Inbound Surface Parcel Post (at non-UPU rates)
- Canada Post—United States Postal Service Contractual Bilateral Agreement for

[1] Docket Nos. MC2010–34, CP2010–95, MC2010–35, R2010–5 and R2010–6.

Inbound Competitive Services (MC2010–14 and CP2010–13—Inbound Surface Parcel Post at Non-UPU Rates and Xpresspost-USA)
International Money Transfer Service—Outbound
International Money Transfer Service—Inbound
International Ancillary Services
Special Services
Address Enhancement Service
Greeting Cards and Stationery
Premium Forwarding Service
Shipping and Mailing Supplies
Negotiated Service Agreements
Domestic
Express Mail Contract 1 (MC2008–5)
Express Mail Contract 2 (MC2009–3 and CP2009–4)
Express Mail Contract 3 (MC2009–15 and CP2009–21)
Express Mail Contract 4 (MC2009–34 and CP2009–45)
Express Mail Contract 5 (MC2010–5 and CP2010–5)
Express Mail Contract 6 (MC2010–6 and CP2010–6)
Express Mail Contract 7 (MC2010–7 and CP2010–7)
Express Mail Contract 8 (MC2010–16 and CP2010–16)
Express Mail & Priority Mail Contract 1 (MC2009–6 and CP2009–7)
Express Mail & Priority Mail Contract 2 (MC2009–12 and CP2009–14)
Express Mail & Priority Mail Contract 3 (MC2009–13 and CP2009–17)
Express Mail & Priority Mail Contract 4 (MC2009–17 and CP2009–24)
Express Mail & Priority Mail Contract 5 (MC2009–18 and CP2009–25)
Express Mail & Priority Mail Contract 6 (MC2009–31 and CP2009–42)
Express Mail & Priority Mail Contract 7 (MC2009–32 and CP2009–43)
Express Mail & Priority Mail Contract 8 (MC2009–33 and CP2009–44)
Parcel Select & Parcel Return Service Contract 1 (MC2009–11 and CP2009–13)
Parcel Select & Parcel Return Service Contract 2 (MC2009–40 and CP2009–61)
Parcel Return Service Contract 1 (MC2009–1 and CP2009–2)
Priority Mail Contract 1 (MC2008–8 and CP2008–26)
Priority Mail Contract 2 (MC2009–2 and CP2009–3)
Priority Mail Contract 3 (MC2009–4 and CP2009–5)
Priority Mail Contract 4 (MC2009–5 and CP2009–6)
Priority Mail Contract 5 (MC2009–21 and CP2009–26)
Priority Mail Contract 6 (MC2009–25 and CP2009–30)
Priority Mail Contract 7 (MC2009–25 and CP2009–31)
Priority Mail Contract 8 (MC2009–25 and CP2009–32)
Priority Mail Contract 9 (MC2009–25 and CP2009–33)
Priority Mail Contract 10 (MC2009–25 and CP2009–34)
Priority Mail Contract 11 (MC2009–27 and CP2009–37)
Priority Mail Contract 12 (MC2009–28 and CP2009–38)
Priority Mail Contract 13 (MC2009–29 and CP2009–39)
Priority Mail Contract 14 (MC2009–30 and CP2009–40)
Priority Mail Contract 15 (MC2009–35 and CP2009–54)
Priority Mail Contract 16 (MC2009–36 and CP2009–55)
Priority Mail Contract 17 (MC2009–37 and CP2009–56)
Priority Mail Contract 18 (MC2009–42 and CP2009–63)
Priority Mail Contract 19 (MC2010–1 and CP2010–1)
Priority Mail Contract 20 (MC2010–2 and CP2010–2)
Priority Mail Contract 21 (MC2010–3 and CP2010–3)
Priority Mail Contract 22 (MC2010–4 and CP2010–4)
Priority Mail Contract 23 (MC2010–9 and CP2010–9)
Priority Mail Contract 24 (MC2010–15 and CP2010–15)
Priority Mail Contract 25 (MC2010–30 and CP2010–75)
Priority Mail Contract 26 (MC2010–31 and CP2010–76)
Priority Mail Contract 27 (MC2010–32 and CP2010–77)
Outbound International
Direct Entry Parcels Contracts
Direct Entry Parcels 1 (MC2009–26 and CP2009–36)
Global Direct Contracts (MC2009–9, CP2009–10, and CP2009–11)
Global Expedited Package Services (GEPS) Contracts
GEPS 1 (CP2008–5, CP2008–11, CP2008–12, CP2008–13, CP2008–18, CP2008–19, CP2008–20, CP2008–21, CP2008–22, CP2008–23 and CP2008–24)
Global Expedited Package Services 2 (CP2009–50)
Global Expedited Package Services 3 (MC2010–28 and CP2010–71)
Global Plus Contracts
Global Plus 1 (CP2008–8, CP2008–46 and CP2009–47)
Global Plus 1A (MC2010–26, CP2010–67 and CP2010–68)
Global Plus 2 (MC2008–7, CP2008–48 and CP2008–49)
Global Plus 2A (MC2010–27, CP2010–69 and CP2010–70)
Inbound International
Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC2010–34 and CP2010–95)
Inbound Direct Entry Contracts with Foreign Postal Administrations
Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008–6, CP2008–14 and MC2008–15)
Inbound Direct Entry Contracts with Foreign Postal Administrations 1 (MC2008–6 and CP2009–62)
International Business Reply Service Competitive Contract 1 (MC2009–14 and CP2009–20)
International Business Reply Service Competitive Contract 2 (MC2010–18, CP2010–21 and CP2010–22)
Competitive Product Descriptions
Express Mail
Express Mail
Outbound International Expedited Services
Inbound International Expedited Services
Priority
Priority Mail
Outbound Priority Mail International
Inbound Air Parcel Post
Parcel Select
Parcel Return Service
International
International Priority Airlift (IPA)
International Surface Airlift (ISAL)
International Direct Sacks—M-Bags
Global Customized Shipping Services
International Money Transfer Service
Inbound Surface Parcel Post (at non-UPU rates)
International Ancillary Services
International Certificate of Mailing
International Registered Mail
International Return Receipt
International Restricted Delivery
International Insurance
Negotiated Service Agreements
Domestic
Outbound International

Part C—Glossary of Terms and Conditions [Reserved]

Part D—Country Price Lists for International Mail [Reserved]

[FR Doc. 2010–27344 Filed 10–28–10; 8:45 am]

BILLING CODE 7710–FW–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 209

Defense Federal Acquisition Regulation Supplement; Continuation of Current Contracts—Deletion of Redundant Text (DFARS Case 2010–D016)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to delete redundant text relating to the continuation of current contracts with a contractor that has been suspended, debarred, or proposed for debarment.

DATES: *Effective date:* October 29, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations System, OUSD (AT&L) DPAP/DARS, 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060. Telephone 703–602–0328; facsimile 703–602–0350. Please cite DFARS Case 2010–D016.

SUPPLEMENTARY INFORMATION:

I. Background

DFARS 209.405–1 limits placement of orders against contracts with contractors that have been debarred, suspended, or proposed for debarment. On December 11, 2003, the final rule published under FAR Case 2002–010 (68 FR 69250) incorporated these restrictions into the FAR. The DFARS text, therefore, became redundant and is deleted by this final rule.

II. Executive Order 12866

This is not a significant regulatory action and, therefore, was not subject to Office of Management and Budget review under section 6(b) of Executive Order 12866, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant DFARS revision within the meaning of 41 U.S.C. 418b and FAR 1.501, and publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS parts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.,* in correspondence.

IV. Paperwork Reduction Act

This rule does not impose any new information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 209

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR part 209 is amended as follows:

PART 209—CONTRACTOR QUALIFICATIONS

■ 1. The authority citation for 48 CFR part 209 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

209.405–1 [Removed]

■ 2. Remove section 209.405–1.

[FR Doc. 2010–27306 Filed 10–28–10; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisitions Regulations System

48 CFR Part 225

RIN 0750–AG59

Defense Federal Acquisition Regulation Supplement; Trade Agreements—New Thresholds (DFARS 2009–D040)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is adopting as final, without change, the interim rule that amended the Defense Federal Acquisition Regulation Supplement (DFARS) to incorporate increased thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements, as determined by the United States Trade Representative.

DATES: *Effective Date:* October 29, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, 703–602–0328.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published an interim rule in the **Federal Register** on June 8, 2010 (75 FR 32637) to amend the clause prescriptions at DFARS 225.1101 and 225.7503 to reflect increased thresholds for application of the trade agreements. The comment period closed on August 9, 2010. DoD received no comments on the interim rule. DoD has therefore adopted the interim rule as a final rule without change.

II. Executive Order 12866

This rule was not subject to Office of Management and Budget review under Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because this rule does not impose economic burdens on contractors. The purpose and effect of this rule is to adjust the dollar threshold changes to keep pace with inflation and thus maintain the status quo.

IV. Paperwork Reduction Act

This final rule affects the certification and information collection requirements in the provisions at DFARS 252.225–7020 and 252.225–7035, currently approved under Office of Management and Budget Control Number 0704–0229. However, there is no impact on the estimated burden hours. The dollar threshold changes are in line with inflation and maintain the status quo.

List of Subjects in 48 CFR Part 225

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR part 225 published at 75 FR 32637 on June 8, 2010, is adopted as final without change.

[FR Doc. 2010–27303 Filed 10–28–10; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 237 and 252

RIN 0750–AG52

Defense Federal Acquisition Regulation Supplement (DFARS); Continuation of Essential Contractor Services (DFARS Case 2009–D017)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is adopting as final, with changes, the interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add policy and a contract clause requiring that contractors providing essential contractor services, as determined by the requiring activity, shall be prepared to continue such services during periods of crisis.

DATES: *Effective date:* October 29, 2010.

Applicability date: Contracting officers may, at their discretion, include these changes in any existing contract with appropriate consideration, in accordance with FAR 1.108(d)(3).

FOR FURTHER INFORMATION CONTACT: Mr. Julian E. Thrash, 703–602–0310.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published an interim rule in the **Federal Register** at 75 FR 10191, on March 5, 2010, implementing the requirements of DoDI 3020.37, Continuation of Essential DoD Contractor Services During Crises. DoD Instruction (DoDI) 1100.22, Policy and Procedures for Determining Workforce Mix, has since superseded DoDI 3020.37.

This rule is necessary to ensure that essential contractor services are not interrupted. The current changing threat environment, particularly under the additional challenges caused by such potential crises as destructive weather, earthquakes, or pandemic disease, has increased the need for continuity of operations capabilities and plans that enable agencies to continue their essential functions during a broad range of emergencies and crises.

DoD established this requirement for contractors to submit their plans to ensure continuation of essential contractor services that support mission-essential functions during a crisis situation. As a general rule, the designation of services as essential contractor services will not apply to an entire contract but will apply only to those service function(s) that have been specifically identified as essential contractor services by the functional commander or civilian equivalent.

The public comment period for the DFARS interim rule closed May 4, 2010. Two respondents submitted comments to the interim rule. A discussion of the comments and the changes made to the rule as a result of those comments is provided below.

II. Analysis of Public Comments

A. Definitions

1. Definition of "Functional Commander or Equivalent"

Comment. A respondent requested the term "functional commander or equivalent" be defined. The respondent was concerned with how this term would be interpreted in non-military offices that did not have a "functional commander or equivalent."

Response. The term "functional commander or equivalent" has been revised. The term appropriate "functional commander or civilian equivalent" clarifies the meaning of the phrase "or equivalent." This revised identifier, "civilian equivalent," was added to the definitions of "essential contractor services," and "mission-essential functions." Additionally, conforming changes to DFARS 237.7602(a), and 237.7602(b) were made for this revised term.

2. Definition of a " Crisis"

Comment. A respondent requested a definition for a "crisis" be added to the text.

Response. A crisis situation is dynamic, with the body of knowledge growing hour-by-hour from the latest situational reports. As such, it does not lend itself to a precise definition. The contractor will be notified to activate plans for a crisis by the contracting officer, who does so at the directions of the appropriate functional commander or civilian equivalent.

B. The Contracting Officer's Role

Comment. A respondent was concerned that DFARS 237.7602, Policy, did not clearly lay out the role of a contracting officer in the process of requiring a contractor to submit a plan. The concern was that direction to the contractor should come from the contracting officer, not the requiring activity.

Response. DFARS 237.7602, Policy, has been revised at paragraphs (a) and (b) to clarify that it is the role of the contracting officer, not the requiring activity, to provide direction to the contractor.

C. Written Plan

1. Status of the Plan

Comment. A respondent expressed concern regarding DFARS 237.7602(b), whether the contractor should "have a plan" or "submit a plan."

Response. DFARS 237.7602(b) has been revised to require contractors to "provide a written plan" for Government-determined essential contractor services.

2. Materially Altered Plans

Comment. A respondent expressed concern that a contracting officer needs to have the most current version of the contractor's plan. The concern centered on the determination of whether a change would "materially alter" the plan.

Response. DFARS 252.237–7023(c)(2) has been revised to require the contractor to provide all plan updates to the contracting officer for approval.

3. Use of a Plan

Comment. A respondent expressed a number of concerns about the evaluation of a contractor's written plan, and whether or not the plan should be evaluated prior to contract award.

Response. In response to this concern, a provision has been created at DFARS 252.237–7024, Notice of Continuation of Essential Contractor Services, to require the submission of the plan as part of the offeror's proposal. The associate provision prescription is added at 237.7603. The contractor's continuity of essential services plan shall be considered and evaluated as part of the technical evaluation of offers. The functional managers of the services should be consulted to determine the sufficiency of these plans. The contractor's Mission-Essential Contractor Services Plan, in the resultant contract, will remain active in accordance with the clause at DFARS 252.237–7023, Continuation of Essential Contractor Services.

D. Equitable Adjustment

Comment. A respondent stated that, if costs increase due to the continuation of services during an event that would create an excusable delay, contractors should be entitled to an equitable adjustment to the terms of the contract. Furthermore, they were concerned that inclusion of the clause in a contract could be construed as waiving the contractor's right to an equitable adjustment to contract terms other than schedule terms when providing its best efforts to maintain continuity of operations during a crisis.

Response. DFARS 252.237–7023(f), Changes, provides the basis for determining an equitable adjustment. In the interim rule, this paragraph allowed for an equitable adjustment to contract price. In the final rule, this paragraph has been revised to include that, in addition to an adjustment in price, an equitable adjustment may be to "delivery schedule, or both."

E. Causes Beyond the Control of the Contractor

Comment. Two respondents requested the clause at DFARS 252.237–7023(c) be clarified with regard to causes beyond the control of the contractor.

Response. As a result of the necessity to ensure performance of a mission-essential function, a new paragraph has been added at DFARS 252.237–7023(d)(1). This paragraph clarifies that, in those specific instances where a contractor function is considered mission essential, it is important for contract performance to continue notwithstanding any other clause of the contract; and that the contractor shall be responsible to perform those services identified as essential contractor services during crisis situations (as directed by the contracting officer), in accordance with its Mission-Essential Contractor Services Plan. If in the course of contract performance, a contractor feels it must apply for an equitable adjustment, it may follow the

process required in DFARS 252.237–7023(f), Changes.

F. Other Changes

• The definitions have been moved from 237.7601 to the clause 252.237–7023(a).

• DFARS 252.237–7023 has been renamed "Continuation of Essential Contractor Services" instead of "Continuation of Mission-Essential Functions" in order to use more precise terminology.

• Redesignated DFARS 252.237–7023(e) adds "military" personnel to the list of options the Government reserves the right to utilize in crisis situations. Additionally, reference to the Office of Federal Procurement Policy letter dated May 2007, and FAR and DFARS parts 18 and 218 were determined unnecessary and have been deleted from that paragraph.

III. Executive Order 12866

This regulatory action was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD certifies that this rule will not have a significant economic impact upon a substantial number of small entities because it allows for an equitable adjustment for additional costs that are incurred during a crisis situation.

The interim rule published at 75 FR 10191, on March 5, 2010, invited comments from small businesses and other interested parties. No comments were received from small entities on the affected DFARS subpart with regard to small businesses.

V. Paperwork Reduction Act

This final rule contains an information collection requirement. The Office of Management and Budget (OMB) has approved the information collection requirement for use through December 31, 2010, under OMB Control Number 0704–0465, in accordance with the emergency processing procedures of 5 CFR 1320.13.

The following is a summary of the information collection requirement.

Title: Defense Federal Acquisition Regulation Supplement (DFARS) 2009–D017; Continuation of Essential Contractor Services.

Type of Request: New collection.

Number of Respondents: 7,600.

Responses per Respondents: 1.25.

Annual Responses: 9,500.

Average Burden per Response: 2.

Total Annual Burden Hours: 19,000.

Needs and Uses: DoD needs this information to ensure essential contractor services are performed for continuity of operations.

Affected Public: Businesses or other for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain contract.

The interim rule, published at 75 FR 10191, on March 5, 2010, invited comments on the following aspects of the interim rule: (a) Whether the collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. No comments were received regarding this information collection requirement.

To request more information on this information collection or to obtain a copy of the information collection requirement and associated collection instruments, please write to the Defense Acquisition Regulations System (DARS), Attn: Mr. Julian Thrash, OUSD(AT&L)DPAP(DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

List of Subjects in 48 CFR Parts 237 and 252

Government procurement.

Clare M. Zebrowski,

Editor, Defense Acquisition Regulations System.

■ Therefore, the Defense Acquisition Regulations System confirms as final the interim rule published at 75 FR 10191, March 5, 2010, with the following changes:

■ 1. The authority citation for 48 CFR parts 237 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 237—SERVICE CONTRACTING

■ 2. Subpart 237.76 is revised to read as follows:

Subpart 237.76—Continuation of Essential Contractor Services

Sec.

Subpart 237.76—Continuation of Essential Contractor Services

237.7600 Scope.

This subpart prescribes procedures for the acquisition of essential contractor services which support mission-essential functions.

237.7601 Definitions.

As used in this subpart, *essential contractor service* and *mission-essential functions* are defined in the clause at 252.237–7023, Continuation of Essential Contractor Services.

237.7602 Policy.

(a) Contractors providing services designated as essential contractor services shall be prepared to continue providing such services, in accordance with the terms and conditions of their contracts, during periods of crisis. As a general rule, the designation of services as essential contractor services will not apply to an entire contract but will apply only to those service functions that have been specifically identified as essential contractor services by the functional commander or civilian equivalent.

(b) Contractors who provide Government-determined essential contractor services shall provide a written plan to be incorporated in the contract, to ensure the continuation of these services in crisis situations. Contracting officers shall consult with a functional manager to assess the sufficiency of the contractor-provided written plan. Contractors will activate such plans only during periods of crisis, as authorized by the contracting officer, who does so at the direction of the appropriate functional commander or civilian equivalent.

(c) The contracting officer shall follow the procedures at PGI 207.105U(b)(20)(C) in preparing an acquisition plan.

237.7603 Solicitation provision and contract clause.

(a) Use the clause at 252.237–7023, Continuation of Essential Contractor Services in all solicitations and contracts for services that are in support of mission-essential functions.

(b) Use the provision at 252.237–7024, Notice of Continuation of Essential Contractor Services in all solicitations for services that include the clause 252.237–7023.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Section 252.237–7023 is revised to read as follows:

252.237–7023 Continuation of Essential Contractor Services.

As prescribed in 237.7603(a), use the following clause:

CONTINUATION OF ESSENTIAL CONTRACTOR SERVICES (OCT 2010)

(a) *Definitions.* As used in this clause–

(1) *Essential contractor service* means a service provided by a firm or individual under contract to DoD to support mission-essential functions, such as support of vital systems, including ships owned, leased, or operated in support of military missions or roles at sea; associated support activities, including installation, garrison, and base support services; and similar services provided to foreign military sales customers under the Security Assistance Program. Services are essential if the effectiveness of defense systems or operations has the potential to be seriously impaired by the interruption of these services, as determined by the appropriate functional commander or civilian equivalent.

(2) *Mission-essential functions* means those organizational activities that must be performed under all circumstances to achieve DoD component missions or responsibilities, as determined by the appropriate functional commander or civilian equivalent. Failure to perform or sustain these functions would significantly affect DoD's ability to provide vital services or exercise authority, direction, and control.

(b) The Government has identified all or a portion of the contractor services performed under this contract as essential contractor services in support of mission-essential functions. These services are listed in attachment __, Mission-Essential Contractor Services, dated _____.

(c)(1) The Mission-Essential Contractor Services Plan submitted by the Contractor, is incorporated in this contract.

(2) The Contractor shall maintain and update its plan as necessary. The Contractor shall provide all plan updates to the Contracting Officer for approval.

(3) As directed by the Contracting Officer, the Contractor shall participate in training events, exercises, and drills associated with Government efforts to test the effectiveness of continuity of operations procedures and practices.

(d)(1) Notwithstanding any other clause of this contract, the Contractor shall be responsible to perform those services identified as essential contractor services during crisis situations (as directed by the Contracting Officer), in accordance with its Mission-Essential Contractor Services Plan.

(2) In the event the Contractor anticipates not being able to perform any of the essential contractor services identified in accordance with paragraph (b) of this clause during a crisis situation, the Contractor shall notify the Contracting Officer or other designated representative as expeditiously as possible and use its best efforts to cooperate with the Government in the Government's efforts to maintain the continuity of operations.

(e) The Government reserves the right in such crisis situations to use Federal employees, military personnel, or contract support from other contractors, or to enter into new contracts for essential contractor services.

(f) *Changes.* The Contractor shall segregate and separately identify all costs incurred in continuing performance of essential services in a crisis situation. The Contractor shall notify the Contracting Officer of an increase or decrease in costs within ninety days after continued performance has been directed by the Contracting Officer, or within any additional period that the Contracting Officer approves in writing, but not later than the date of final payment under the contract. The Contractor's notice shall include the Contractor's proposal for an equitable adjustment and any data supporting the increase or decrease in the form prescribed by the Contracting Officer. The parties shall negotiate an equitable price adjustment to the contract price, delivery schedule, or both as soon as is practicable after receipt of the Contractor's proposal.

(g) The Contractor shall include the substance of this clause, including this paragraph (g), in subcontracts for the essential services.

(End of clause)

■ 4. Section 252.237–7024 is added to read as follows:

252.237–7024 Notice of Continuation of Essential Contractor Services.

As prescribed in 237.7603(b), use the following provision:

NOTICE OF CONTINUATION OF ESSENTIAL CONTRACTOR SERVICES [OCT 2010]

(a) *Definitions. Essential contractor service* and *mission-essential functions* have the meanings given in the clause at 252.237–7023, Continuation of Essential Contractor Services, in this solicitation.

(b) The offeror shall provide with its offer a written plan describing how it will continue to perform the essential contractor services listed in attachment __, Mission Essential Contractor Services, dated _____, during periods of crisis. The offeror shall—

(1) Identify provisions made for the acquisition of essential personnel and resources, if necessary, for continuity of operations for up to 30 days or until normal operations can be resumed;

(2) Address in the plan, at a minimum—

(i) Challenges associated with maintaining essential contractor services during an extended event, such as a pandemic that occurs in repeated waves;

(ii) The time lapse associated with the initiation of the acquisition of essential personnel and resources and their actual availability on site;

(iii) The components, processes, and requirements for the identification, training, and preparedness of personnel who are capable of relocating to alternate facilities or performing work from home;

(iv) Any established alert and notification procedures for mobilizing identified "essential contractor service" personnel; and

(v) The approach for communicating expectations to contractor employees regarding their roles and responsibilities during a crisis.

(End of provision)

[FR Doc. 2010–27302 Filed 10–28–10; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 246 and 252

RIN 0750–AG73

Defense Federal Acquisition Regulation Supplement; Safety of Facilities, Infrastructure, and Equipment for Military Operations (DFARS Case 2009–D029)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD is issuing an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 807 of the National Defense Authorization Act of 2010. Section 807 requires that facilities, infrastructure, and equipment that are intended for use by military or civilian personnel of the Department of Defense (DoD), in current or future military operations, should be inspected for safety and habitability prior to use, and that such facilities should be brought into compliance with generally accepted standards for the safety and health of personnel to the maximum extent practicable consistent with the requirements of military operations and the best interests of DoD to minimize the safety and health risk posed to such personnel.

DATES: *Effective date:* October 29, 2010.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before December 28, 2010, to be considered in the formation of the final rule.

ADDRESSES: Submit comments, identified by DFARS Case 2008–D029, using any of the following methods:

Regulations.gov: http://www.regulations.gov.

Submit comments via the Federal eRulemaking portal by inputting "DFARS Case 2009–D029" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2009–D029." Follow the instructions provided at the "Submit

a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2009–D029" on your attached document.

E-mail: dfars@osd.mil. Include DFARS Case 2008–D029 in the subject line of the message.

Fax: 703–602–0350.

Mail: Defense Acquisition Regulations System, Attn: Ms. Mary Overstreet, OUSD (AT&L) DPAP (DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov*, including any personal 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).

FOR FURTHER INFORMATION CONTACT: Ms. Mary Overstreet, 703–602–0311.

SUPPLEMENTARY INFORMATION:

I. Background

This interim rule implements section 807 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84), which was signed on October 28, 2009. Section 807 requires that—

- Each contract, including task or delivery orders, entered into for the construction, installation, repair, maintenance, or operation of facilities, infrastructure, and equipment for use by DoD military or civilian should be inspected for safety and habitability prior to use to minimize the safety and health risk posed to such personnel;
- The term "generally accepted standards" shall be defined with respect to fire protection, structural integrity, electrical systems, plumbing, water treatment, waste disposal, and telecommunications networks for the purposes of this section; and
- Exceptions and limitations shall be provided as may be needed to ensure that this section can be implemented in a manner that is consistent with the requirements of military operations and the best interests of the Department of Defense.

DoD amended DFARS subpart 246.2, Contract Quality Requirements, to add section 246.270, Safety of Facilities, Infrastructure, and Equipment for Military Operations. Part 252 is amended to include a new contract clause, 252.246–7004, Safety of Facilities, Infrastructure, and Equipment for Military Operations.

DFARS 246.270–1 provides for the scope to be limited to current or future military operations performed outside the United States, Guam, Puerto Rico, and the Virgin Islands.

DFARS 246.270–2 provides for the rule to apply to each contract, including task and delivery orders, for construction, installation, repair, maintenance, or operation of facilities. This includes contracts for facilities, infrastructure, and equipment configured for occupancy, including but not limited to, existing host nation facilities, new construction, and relocatable buildings. Contracts will require compliance with the Unified Facilities Criteria (UFC) 1–200–01 and its referenced standards to meet generally accepted standards for fire protection, structural integrity, electrical systems, plumbing, water treatment, waste disposal, and telecommunications networks. Facilities, infrastructure, and equipment shall be inspected prior to use for compliance with UFC 1–200–01 to ensure safety and habitability.

DFARS 246.270–3 allows the combatant commander to waive compliance with any standards when compliance is impracticable under prevailing operational conditions.

The new contract clause 252.246–7004, Safety of Facilities, Infrastructure, and Equipment for Military Operations, provides for use of the UFC 1–200–01 standards. The clause also provides for use of facilities that are constructed to standards equivalent to or more stringent than the UFC 1–200–01 standards based upon a written determination by the Contracting Officer with the concurrence of the relevant Discipline Working Group. The Discipline Working Group is defined in the clause. Section 807 is applicable to contracts for the acquisition of commercial items. Subpart 252.2, Text of Provisions and Clauses, is amended to add 252.246.7004, Safety of Facilities, Infrastructure, and Equipment for Military Operations, to 252.212–7001, Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisition of Commercial Items, subparagraph (b)(22).

Contracting officers are encouraged to include this rule in solicitations issued before the effective date, provided award occurs after the effective date. Contracting officers are also encouraged to apply this rule to the maximum extent practicable to existing contracts, consistent with FAR 1.108(d).

II. Executive Order 12866

This rule is a significant regulatory action and, therefore, was subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD has prepared an initial regulatory flexibility analysis consistent with 5 U.S.C. 603. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

The rule affects contractors with contracts, including task and delivery orders, in support of current and future military operations for construction, installation, repair, maintenance, or operation of facilities. This includes contracts for facilities, infrastructure, and equipment configured for occupancy, including but not limited to, existing host nation facilities, new construction, and relocatable buildings.

Contracts will require compliance with the Unified Facilities Criteria (UFC) 1–200–01 to meet generally accepted standards for fire protection, structural integrity, electrical systems, plumbing, water treatment, waste disposal, and telecommunications networks. Facilities, infrastructure, and equipment shall be inspected prior to use to ensure safety and habitability.

Military operations affected by this rule are those outside the United States, Guam, Puerto Rico, and the Virgin Islands.

Contract support for recent military operations has been provided primarily by the Department of Army's LOGCAP contracts, which were awarded to large businesses. There are high costs associated with a company being able to perform in the geographic regions where most military operations are currently taking place. This makes it unlikely that a small business could afford to sustain the infrastructure required to perform these types of services in locations such as Iraq and Afghanistan. Small business preferential programs under FAR part 19 may not apply to these contracts as they only apply to contracts placed in the United States or its outlying areas. At this time, DoD is unable to estimate the number of small entities to which this rule will apply. However, based on the above factors, the number of small business firms to which the rule would apply is expected to be minimal.

DoD invites comments from small businesses and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit comments separately and should cite 5

U.S.C. 610 (DFARS Case 2009–D029) in correspondence.

IV. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the rule does not impose additional information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

V. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD) that urgent and compelling circumstances exist to promulgate this interim rule without prior opportunity for public comments. This action is necessary because section 807 of the National Defense Authorization Act for Fiscal Year 2010 became effective 60 days after enactment, October 28, 2009.

Section 807 requires that facilities, infrastructure, and equipment that are intended for use by military or civilian personnel of the Department of Defense (DoD), in current or future military operations, should be inspected for safety and habitability prior to use and that such facilities should be brought into compliance with generally accepted standards for the safety and health of personnel to the maximum extent practicable consistent with the requirements of military operations. Implementing language must be published as quickly as possible to minimize the safety and health risk posed to DoD military or civilian personnel during military operations.

However, pursuant to 41 U.S.C. 418b and FAR 1.501–3, DoD will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 246 and 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 246 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 246 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 246—QUALITY ASSURANCE

■ 2. Section 246.101 is added to read as follows:

246.101 Definitions.

Discipline Working Group, as used in this subpart, is defined in the clause at 252.246–7004, Safety of Facilities, Infrastructure, and Equipment for Military Operations.

■ 3. Section 246.270 is added to read as follows:

246.270 Safety of facilities, infrastructure, and equipment for military operations.

246.270–1 Scope.

This section implements section 807 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84). It establishes policies and procedures intended to ensure the safety and habitability of facilities, infrastructure, and equipment acquired for use by DoD military or civilian personnel during military operations performed outside the United States, Guam, Puerto Rico, and the Virgin Islands.

246.270–2 Policy.

(a) Contracts (including task and delivery orders) for the construction, installation, repair, maintenance, or operation of facilities, infrastructure, and equipment configured for occupancy, including but not limited to, existing host nation facilities, new construction, and relocatable buildings acquired for use by DoD military or civilian personnel, shall require a pre-occupancy safety and habitability inspection.

(b) To minimize safety and health risks, each contract covered by this policy shall require the contractor's compliance with the Unified Facilities Criteria (UFC) 1–200–01 and its referenced standards for—

(1) Fire protection;
(2) Structural integrity;
(3) Electrical systems;
(4) Plumbing;
(5) Water treatment;
(6) Waste disposal; and
(7) Telecommunications networks.

(c) Existing host nation facilities constructed to standards equivalent to or more stringent than UFC 1–200–01 are acceptable upon a written determination of the acceptability of the standards by the Discipline Working Group.

(d) Inspections to ensure compliance with UFC 1–200–01 standards shall be conducted in accordance with the inspection clause of the contract.

246.270–3 Exceptions.

The combatant commander may waive compliance with the foregoing standards when it is impracticable to comply with such standards under prevailing operational conditions.

246.270–4 Contract clause.

Use the clause at 252.246–7004, Safety of Facilities, Infrastructure, and Equipment for Military Operations, in solicitations and contracts for the construction, installation, repair, maintenance, or operation of facilities, infrastructure, or for equipment configured for occupancy, planned for use by DoD military or civilian personnel during military operations.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Section 252.212–7001 is amended as follows:

■ a. Redesignate paragraphs (b)(22), (b)(23), and (b)(24) as paragraphs (b)(23), (b)(24), and (b)(25), respectively;

■ b. Add new paragraph (b)(22) to read as follows:

252.212–7001 Contract Terms and Conditions Required To Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items.

* * * * *

(b) * * *

(22)_____ 252.246–7004, Safety of Facilities, Infrastructure, and Equipment for Military Operations (OCT 2010) (Section 807 of Public Law 111–84).

* * * * *

■ 5. Section 252.246–7004 is added to read as follows:

252.246–7004 Safety of Facilities, Infrastructure, and Equipment for Military Operations.

As prescribed in 246.270–4, use the following clause:

SAFETY OF FACILITIES, INFRASTRUCTURE, AND EQUIPMENT FOR MILITARY OPERATIONS (OCT 2010)

(a) *Definition. Discipline Working Group,* as used in this clause, means representatives from the DoD Components, as defined in MIL–STD–3007F, who are responsible for the unification and maintenance of the Unified Facilities Criteria (UFC) documents for a particular discipline area.

(b) The Contractor shall ensure, consistent with the requirements of the applicable inspection clause in this contract, that the facilities, infrastructure, and equipment acquired, constructed, installed, repaired, maintained, or operated under this contract comply with Unified Facilities Criteria (UFC) 1–200–01 for—

(1) Fire protection;
(2) Structural integrity;
(3) Electrical systems;
(4) Plumbing;
(5) Water treatment;
(6) Waste disposal; and
(7) Telecommunications networks.

(c) The Contractor may apply a standard equivalent to or more stringent than UFC 1–

200–01 upon a written determination of the acceptability of the standard by the Contracting Officer with the concurrence of the relevant Discipline Working Group.

(End of clause)

[FR Doc. 2010–27305 Filed 10–28–10; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

RIN 0750–AG60

Defense Federal Acquisition Regulation Supplement; Balance of Payments Program Exemption for Commercial Information Technology—Construction Material (DFARS Case 2009–D041)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement the exemption from the Balance of Payments Program for construction material that is commercial information technology.

DATES: *Effective Date:* October 29, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, 703–602–0328.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending the DFARS to implement in the clauses at 252.225–7044, Balance of Payments Program—Construction Material, and 252.225–7045, Balance of Payments Program—Construction Material under Trade Agreements, the exemption from the Balance of Payments Program for construction material that is commercial information technology.

DoD published a proposed rule in the Federal Register (75 FR 32636) on June 8, 2010. DoD received no comments on the proposed rule. Therefore, DoD is adopting the proposed rule as a final rule without change.

II. Executive Order 12866

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because this rule does not impose economic burdens on contractors. The purpose and effect of this rule is to provide an exception to the Balance of Payments Program for commercial information technology to be used in overseas construction projects.

IV. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) does not apply because the proposed rule contains no information collection requirements.

List of Subjects in 48 CFR Part 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR part 252 is amended as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR part 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

■ 2. Section 252.225–7044 is amended by revising the clause date, revising paragraph (b)(1), redesignating paragraph (b)(2) as paragraph (b)(3), and adding new paragraph (b)(2) to read as follows:

252.225–7044 Balance of Payments Program—Construction Material.

* * * * *

BALANCE OF PAYMENTS PROGRAM—CONSTRUCTION MATERIAL (OCT 2010)

* * * * *

(b) * * *

(1) Construction material valued at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation;

(2) Information technology that is a commercial item; or

* * * * *

■ 3. Section 252.225–7045 is amended by:

■ a. Revising the clause date, revising paragraph (c)(1), redesignating paragraph (c)(2) as paragraph (c)(3), and adding new paragraph (c)(2); and

■ b. In Alternate I, by revising the clause date, revising paragraph (c)(1), redesignating paragraph (c)(2) as paragraph (c)(3), and adding new paragraph (c)(2).

The revisions and additions read as follows:

252.225–7045 Balance of Payments Program—Construction Material Under Trade Agreements.

* * * * *

BALANCE OF PAYMENTS PROGRAM—CONSTRUCTION MATERIAL UNDER TRADE AGREEMENTS (OCT 2010)

* * * * *

(c) * * *

(1) Construction material valued at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation;

(2) Information technology that is a commercial item; or

* * * * *

ALTERNATE I (OCT 2010)

* * * * *

(c) * * *

(1) Construction material valued at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation;

(2) Information technology that is a commercial item; or

* * * * *

[FR Doc. 2010–27304 Filed 10–28–10; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2008–0613]

RIN 2127–AK49

Federal Motor Vehicle Safety Standards; Seat Belt Assembly Anchorages, School Bus Passenger Seating and Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: In this final rule, we respond to petitions for reconsideration of a final rule published on October 21, 2008, which upgraded NHTSA's school bus passenger crash protection requirements. This document denies most of the requests in the petitions for reconsideration.

To the extent we grant petitions, we make slight changes to the regulatory text of the October 2008 final rule to clarify the rule. We make clearer the procedure specifying how we will measure the height of school bus passenger torso belts, and we are clarifying that a requirement that seat belts be integral to the passenger seat (a requirement adopted to reduce the

likelihood of passengers getting injured by or tangled in loose belts) also applies to seats that have wheelchair positions or side emergency doors behind them, even if the seats are in the last row of vehicles. We are also slightly revising the procedure for testing the self-latching requirement for school bus seat cushions, to specify the weight that is placed on the seat cushion in Newtons, to specify that the downward force is applied in a one to five second timeframe, and to specify that activation of the self-latching mechanism is assessed using the seat cushion retention test. Those provisions make the language more consistent with that of a pre-existing seat cushion retention test in the standard.

DATES: The effective date of this final rule is April 27, 2011.

Petitions for reconsideration: Petitions for reconsideration of this final rule must be received not later than December 13, 2010.

ADDRESSES: Petitions for reconsideration of this final rule must refer to the docket and notice number set forth above and be submitted to the Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, Mr. Charles Hott, Office of Crashworthiness Standards (*telephone:* 202–366–0247) (*fax:* 202–366–4921), NVS–113. For legal issues, Ms. Dorothy Nakama, Office of the Chief Counsel (*telephone:* 202–366–2992) (*fax:* 202–366–3820), NCC–112. These officials can be reached at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background—October 21, 2008 Final Rule

In a final rule published on October 21, 2008 (73 FR 62744, NHTSA Docket No. 2008–0163), we (NHTSA) upgraded the school bus [1] occupant protection requirements of various Federal motor vehicle safety standards, primarily by amending FMVSS No. 222, "School bus passenger seating and crash protection" (49 CFR 571.222), and also by amending the requirements of FMVSS No. 207, "Seating systems," No. 208, "Occupant crash protection," and No 210, "Seat belt assembly anchorages," relating to the strength of the seating system and seat belt anchorages.[2] [3]

The final rule provided the most up-to-date information known to the agency on seat belts on large school buses. In the final rule, we explained the findings of NHTSA's school bus research program conducted in response to the Transportation Equity Act for the 21st Century (TEA–21) and discussed principles that the agency weighed about belts on large buses. The document affirmed that States should have the choice of ordering seat belts on their large (over 4,536 kg (10,000 pounds (lb)) GVWR) school buses, but also affirmed that accident data and crash research findings did not support a conclusion that a Federal mandate for seat belts on large school buses was warranted. The final rule adopted performance and installation requirements for voluntarily-installed seat belts on large school buses to ensure the strength of the anchorages and that the belts will not degrade compartmentalization.[4]

The October 21, 2008 final rule's most significant changes to FMVSS No. 222 involved:

- Requiring small school buses, which are currently required to have lap belts for passenger seating positions, to have a lap/shoulder belt at each passenger seating position (a "lap/shoulder belt" is a Type 2 seat belt assembly under FMVSS No. 209 (see S3));
- Increasing the minimum seat back height requirement from 508 millimeters (mm) (20 inches (in)) from the seating reference point (SgRP) to 610 mm (24 in) for all school buses;
- Incorporating performance requirements and other specifications into the standard to ensure that lap/shoulder belts in small school buses and voluntarily-installed lap and lap/shoulder belts in large school buses have sufficient strength and are compatible with compartmentalization; and,
- Requiring all school buses that have seat bottom cushions that are designed to flip up or be removable, typically for easy cleaning, to have a self-latching mechanism.

The first three upgrades were based on the findings of NHTSA's school bus research program, discussed in detail in the preamble to the final rule, which the agency conducted in response to TEA–21.[5] Requiring small school buses to have lap/shoulder belts for all passengers and raising the seat back height on all school buses to 610 mm (24 in) makes the highly protective interior of the school bus even safer. Further, as new designs of lap/shoulder belts intended for large school buses are emerging in the marketplace, the third initiative will require lap/shoulder belts to be complementary with compartmentalization, ensuring that the high level of passenger crash protection is enhanced and not degraded by any seat belt system.

[1] "School bus" is defined in 49 CFR 571.3 as a bus that is sold, or introduced in interstate commerce, for purposes that include carrying students to and from school or related events, but does not include a bus designed and sold for operation as a common carrier in urban transportation. A "bus" is a motor vehicle, except a trailer, designed for carrying more than 10 persons. In this final rule, when we refer to "large" school buses, we refer to those school buses with gross vehicle weight ratings (GVWRs) of more than 4,536 kilograms (kg) (10,000 pounds (lb)). These large school buses may transport as many as 90 students. "Small" school buses are school buses with a GVWR of 4,536 kg (10,000 lb) or less. Generally, these small school buses seat 15 persons or fewer, or have one or two wheelchair seating positions.

[2] The October 21, 2008 final rule includes a detailed explanation of the rationale for the rulemaking. *See* 73 FR 62744.

[3] The notice of proposed rulemaking (NPRM) preceding this final rule was published on November 21, 2007 (72 FR 65509; Docket No. NHTSA–2007–0014).

[4] FMVSS No. 222 provides passenger crash protection using the "compartmentalization" concept. Compartmentalization ensures that passengers are cushioned and contained by the seats in the event of a school bus crash by requiring school bus seats to be positioned in a manner that provides a compact, protected area surrounding each seat. If a seat is not compartmentalized by a seat back in front of it, compartmentalization must be provided by a padded and protective restraining barrier. The seats and restraining barriers must be strong enough to maintain their integrity in a crash, yet flexible enough to be capable of deflecting in a manner which absorbs the energy of the occupant. They must meet specified height requirements and be constructed, by use of substantial padding or other means, so that they provide protection when they are impacted by the head and legs of a passenger. Compartmentalization minimizes the hostility of the crash environment and limits the range of movement of an occupant. The compartmentalization approach ensures that high levels of crash protection are provided to each passenger independent of any action on the part of the occupant.

[5] The fourth initiative, for self-latching mechanisms, responds to an NTSB recommendation to NHTSA (H–84–75).

II. Petitions for Reconsideration and Comments—Overview

NHTSA received petitions for reconsideration of the final rule from: school bus manufacturers Blue Bird Corporation (Blue Bird) and IC Bus, LLC (IC); seat manufacturers C.E. White Company (CEW) and M2K, LLC (M2K); and from the Marietta City School District (MCSD) of Ohio. With regard to changes to the regulatory text adopted by the October 2008 final rule, petitioners requested NHTSA to reconsider: The stringency of the FMVSS No. 210 requirements adopted for large school buses (IC believed the requirements were unnecessarily high); the application of FMVSS No. 207 to small school bus seats with lap/shoulder belts (Blue Bird believed the standard need not apply to the vehicles); the requirement for seat width (M2K believed all seats should be allowed to be a minimum of 257 mm (10.1 in) wide; the specifications in the final rule for measuring the school bus torso belt adjusted height (Blue Bird requested further clarification); the types of seats which must have integral seat belts (Blue Bird suggested that the requirement should apply to seats that have wheelchair positions or side emergency doors behind them); and, the test requirements for self-latching seat cushions (Blue Bird, M2K, MCSD).

With regard to several issues that were either outside the scope of this rulemaking or otherwise not properly the subject of a petition for reconsideration, NHTSA received comments from Public Citizen (PC), CEW and IC. PC requested that the agency require lap/shoulder seat belts in large school buses and that NHTSA investigate "whether compartmentalization can effectively restrain occupants in side-impact and rollover crashes." CEW and IC asked NHTSA to change the GVWR cut off delineating "large" school buses from "small" school buses, from 4,536 kg (10,000 lb) GVWR to 6,577 kg (14,500 lb) (suggested by CEW) or 7,257 kg (16,000 lb) (suggested by IC). PC and the American Association for Justice (AAJ) objected to the agency's discussion in the final rule of the assessment of the law relating to preemption of State tort law.[6]

[6] Apparently interpreting the discussion as an assertion of preemption of state tort law, AAJ objected to the discussion just as it has objected to similar discussions in other NHTSA rulemaking actions since 2007. Public Citizen expressed similar objections to the preemption discussion in the preamble.

III. Petitions for Reconsideration of Amendments Adopted by Final Rule

a. Stringency of FMVSS No. 210 Requirements

Final Rule—In the final rule, we specified one anchorage strength requirement (i.e., 13,334 N (3,000 lb) applied to the torso and pelvic body blocks) for both large and small school buses with lap/shoulder seat belts. We explained in the final rule our reasons for keeping a single requirement in FMVSS No. 210 (73 FR at 62765), notwithstanding data from the post-NPRM testing [7] [8] that indicated that a large school bus pulse generates about 67 percent of the FMVSS No. 210 force, assuming two belted seating positions. (For three belted positions, it was determined that the same peak dynamic load generates 44 percent of the FMVSS No. 210 force.[9]) Included among our reasons for keeping a single requirement in FMVSS No. 210, equal to the more severe small school bus case, was that the 13,334 N (3,000 lb) FMVSS No. 210 requirement provides a safety margin we deem appropriate, and that a single requirement facilitates better efficiency in the testing. Further, NHTSA's testing and the comments from school bus seat manufacturers led us to conclude that the 13,334 N (3,000 lb) requirement would not be difficult to meet. We also noted that commenters did not provide cost and weight data showing any cost savings resulting from a reduced loading for a larger class of school buses.

With regard to safety performance, we set the requirement at 13,334 N (3,000 lb) based in part on the recognition that anchorage strength provides the foundation upon which the restraint system is built. We believed that there was a safety need to require the anchorages on large school buses to meet the more stringent FMVSS No. 210 requirement because the safety margin provided by the requirement better ensures that the anchorages will be strong enough to deal with loading in excess of that exerted on the anchorages in the NHTSA research program, either because of use or misuse by larger occupants, the stiffness and mass of the vehicle (*e.g.,* vehicles closer in mass to a small school bus than a large school bus will experience a more severe crash pulse), or because the crash could be more severe than the crash characteristics considered in the research program.

Petitions for Reconsideration—In its petition for reconsideration, IC requested that NHTSA reduce the anchorage strength requirement from 13,334 N (3,000 lb) to ⅔ of the small bus requirement (the current FMVSS No. 210 requirement), due to our recognition in the final rule that large school buses experience lower crash forces than do small school buses. (IC had previously expressed this view in its comments on the NPRM.) IC believed that NHTSA's testing and analysis suggest that a more appropriate strength requirement for large school buses would be ⅔ of the small bus requirement. IC stated that it only builds large school buses "and could specifically develop a seating system that effectively protects the occupant and is more cost effective than the seat for a small school bus." Based on its conversations with current seat suppliers, IC estimated that there could be a cost savings to a school district of $10–$15 per seat, or $220–$330 per typical 66 passenger bus. The petitioner stated that setting the FMVSS No. 210 requirement higher than necessary will drive up the cost of vehicles.

NHTSA's Response—We are denying IC's request. The petitioner's views are repetitive of views it expressed in comments to the NPRM, to which NHTSA responded in the preamble of the final rule (73 FR at 62765).

We reiterate the agency's position discussed in the final rule. We agree that the mass of the bus plays an important role in the amount of force that seat belt anchorages undergo in a crash. However, as we explained in the final rule preamble, we did not and do not believe that the data from the school bus research program should be used to define the upper bounds of the performance that should be prescribed for the seat belt anchorages. The frontal crash test into a fixed rigid barrier represents a crash between two vehicles of the same weight. The data, generated from a controlled laboratory environment, are inherently bounded to some degree in representing the force to which the anchorages could be exposed in a real-world environment.

In the laboratory sled test, the force measured on the anchorages was produced using test dummies of a certain mass, a crash pulse of a certain severity, and particular school bus seats. The final rule referenced sled tests with 50th percentile male dummies in school bus seats and a crash pulse representing a 30 mph full frontal rigid barrier crash

[7] "NHTSA Technical Analysis to Support the Final Rule Upgrading Passenger Crash Protection in School Buses," September 2008.

[8] "NHTSA Vehicle Research and Test Center's Technical Report on Dynamic and Quasi-Static Testing for Lap/Shoulder Belts in School Buses," September 2008.

[9] This calculation assumes a bench seat with three fixed or flex-seating positions and that three 5th percentile female occupants would be generating the dynamic loading.

test of a 71 passenger Type C (conventional) school bus. The GVWR of this bus was 13,154 kg (29,000 lb) and the seat anchorage loads obtained were specific to the type and weight of the bus, crash type, and the size of the seated occupants. The anchorage loads would be higher for larger occupants (such as 95th percentile adult males which correspond to the size of some high school football players) and school buses closer in weight to a small school bus than the larger Type C school bus. As discussed in the final rule, since anchorage strength provides the foundation upon which the restraint system is built, there is a vital need to require the anchorages to meet the more stringent yet practicable FMVSS No. 210 requirements to ensure an adequate safety factor. Having this safety margin better ensures that the anchorages will be strong enough to withstand loads in excess of the load produced by the sled test, loads possibly resulting from "worst case" scenarios, *e.g.,* the use or misuse of the seat belts by larger occupants, use of an inordinately stiff and heavy seat, or a collision of high severity.

The 13,334 N (3,000 lb) FMVSS No. 210 load has been used to test seat belt anchorages for decades. Seat belt anchorages certified as meeting the requirements have a reliable and proven safety record. Our testing indicated that the same FMVSS No. 210 strength requirements for small and large school buses are practicable and would not be difficult to meet, a finding which was supported by comments from school bus seat manufacturers. While the crash pulse experienced by large school buses may be less severe than that of small school buses in similar collisions, applying the FMVSS No. 210 loads to seat belts that are voluntarily installed on large school buses will increase the likelihood that any seat belt that is installed will perform well under a wide range of crash conditions, occupant sizes, and seat belt use/misuse conditions.

Although it may appear that the anchorages of large school bus seats are required to be designed to a greater safety margin than those of small school bus seats, it is important to note that the additional FMVSS No. 207 seat inertial loading is only applied to small school bus seats during the FMVSS No. 210 test. We estimated that the combined FMVSS No. 210 and FMVSS No. 207 loads applied simultaneously exceed the actual measured total dynamic load on a small school bus seat with three seating positions by 50 percent and is approximately equivalent to the actual dynamic loads on a seat with two seating positions.[10] This additional FMVSS No. 207 seat load is not applied to large school bus seats—in part due to the wider safety margin (133 percent) associated with the FMVSS No. 210 strength requirement.

IC stated in its petition that most, if not all, bus manufacturers already build in a "safety margin" when producing their vehicles to ensure that the vehicle will meet the requirements in a compliance test, and so the "'safety margin' that NHTSA has built into the regulation is compounded by the vehicle manufacturer's safety margin." While we are encouraged to know that some manufacturers build a safety margin in their vehicles, the agency cannot rely on a safety margin that is voluntary on the part of the manufacturer for its regulations.

IC presented no new data that supports its position that the anchorage strength for large school buses should be less than that for small school buses, except for an estimate of cost savings for a "two-thirds load seat," which we find tenuous. As IC itself noted in its petition, "At this time it is difficult to accurately estimate the potential cost savings that would be associated with seating systems that meet ⅔ of the current FMVSS 210 requirement because such seating systems are not currently designed or available."

Cost savings in the range of $10–$15 per seat appears high; the petitioner did not submit information explaining the basis for this cost estimate. As stated in the final rule preamble, we do not believe it is difficult from an engineering standpoint to meet the FMVSS No. 210 load requirement. We are not convinced that a two-thirds load seat would be engineered that differently from a full load FMVSS No. 210 seat. Further, as explained above, even if the seats are different, we believe that any added structure or reinforcement of the seat is a necessary measure to increase the likelihood of adequate performance of the seat and seat belt anchorages in misuse situations or in severe crashes.

IC further stated that the loading requirement for a flex seat, which has a seating position designed for a small occupant, should not be required to meet the same loading requirements as the current FMVSS No. 210. IC suggested that the load requirements for the "small occupant seating position" (*see* definition, FMVSS No. 222) be based on the weight of a 95th percentile 10-year-old multiplied by the measured pulse deceleration, which the petitioner suggested to be 13.5 g.

We are maintaining the FMVSS No. 210 anchorage load requirements at all flex-seat seating positions even though we acknowledge that some of the seating positions may likely contain smaller riders (and not exclusively larger riders) when the seat is at full capacity. However, as previously stated, anchorage strength provides the foundation upon which the restraint system is built and so providing a higher factor of safety as it relates to the applied test load for large occupants is not unreasonable. We established that our standard requires a minimum level of anchorage strength for larger occupants (or larger students) since it is conceivable that, when riding alone, they may have the option to sit in the center seating position of a flex-seat, for example, where the seat belt anchorage may potentially be loaded to a relatively high level in a crash scenario. Additionally, our testing of flex-seats suggests that there are no practicability concerns for meeting the FMVSS No. 210 load requirements.

IC suggested that there is a "distinctive difference" between school buses with a GVWR greater than 7,257 kg (16,000 lb) as compared to school buses with a GVWR less than or equal to 7,257 kg (16,000 lb). "School buses with a GVWR of less than 16,000 lbs. are most often based on a passenger or light truck vehicle. School buses with a GVWR greater than 16,000 lbs. are most often an integrated vehicle designed specifically for that application and components and systems are usually similar to medium and heavy duty trucks." IC stated that if NHTSA is not inclined to lower the FMVSS No. 210 strength requirement for school buses greater than 4,536 kg (10,000 lb) GVWR, IC petitioned to change the requirement for school buses with a greater than 7,257 kg (16,000 lb) GVWR to two-thirds of the current FMVSS No. 210 strength requirement.

NHTSA is declining IC's suggestion to lower the FMVSS No. 210 strength requirements for school buses with a GVWR greater than 7,257 kg (16,000 lb) for the same reasons we have denied IC's petition to lower the FMVSS No. 210 requirements for large school buses overall. The crash pulse used in our sled tests where the maximum seat anchor loads during the sled tests were approximately two-thirds of those in a FMVSS No. 210 test was that of a school bus with a GVWR of 13,154 kg (29,000 lb) in a frontal crash into fixed rigid barrier. The seat anchor forces would be greater than those measured in the sled tests with a more severe crash pulse (e.g., a lighter school bus crashing into a heavier and stiffer vehicle) and with

[10] *See* 73 FR at 62758.

heavier occupants in heavier seats. IC provided no data to suggest that school buses with a GVWR greater than 7,257 kg (16,000 lb) will have seat belt anchorage loads two-thirds that of the current FMVSS No. 210 requirement under all passenger and crash conditions. We believe that a single criterion for application of FMVSS No. 210 loads to school bus seats is practicable. The anchorage strength provides the foundation upon which the restraint system is built and so providing a higher factor of safety as it relates to the applied test load for large school buses is not unreasonable. In addition, we are not applying the additional FMVSS No. 207 seat inertial loads to large school buses due to the wider safety margin associated with the uniform FMVSS No. 210 requirement. We require the additional FMVSS No. 207 loads to be applied simultaneously with the FMVSS No. 210 loads for small school buses.

With regard to IC's suggestion that the GVWR cut-off between large and small school buses should be set at a higher GVWR level, the agency's response to this and a related CEW suggestion is discussed later in this preamble. The agency is declining to make the change in this final rule.

In conclusion, for the reasons discussed above, we have determined that the FMVSS No. 210 loading requirement is appropriate for seat belts voluntarily installed on large school buses. Therefore, in this final rule, we will not lower the seat belt anchorage loads for large school buses.

b. Applying FMVSS No. 207 to Small School Buses

Final Rule—In the final rule, we decided it was necessary to apply FMVSS No. 207 to small school buses with lap/shoulder belts to minimize the possibility of the seats' failure by forces acting on them as a result of vehicle impact.[11] This decision disagreed with Blue Bird's comment on the NPRM, in which Blue Bird recommended not applying FMVSS No. 207 to small school buses. Blue Bird believed that FMVSS No. 207 was excessive because "the required FMVSS 210 loading captures the seat inertial loading at a deceleration level exceeding the 20g required by FMVSS 207."

In the final rule, we discussed our reasons for concluding that there was a safety need to apply FMVSS No. 207 to small school buses. Among the reasons, we explained that the dynamic seat anchor loads measured in NHTSA's sled testing of small school bus seating systems (tests using a small school bus crash pulse with restrained test dummies in the bench seat under evaluation, and belted and unbelted test dummies in seats aft of the bench seat under evaluation) matched, or replicated with a reasonable safety margin, the total load on the seat from the combined FMVSS No. 207 and FMVSS No. 210 loads. In the agency's analysis, we included the rear loading to school bus seats from belted and unbelted occupants in the aft row.

Petition for Reconsideration—In its petition for reconsideration, Blue Bird disagreed with the final rule's requirement to apply FMVSS No. 207 loading to small school buses with lap/shoulder seat belt assemblies. Blue Bird stated that the additional load is not necessary if the loading from rear passengers is not taken into consideration, and provided an analysis of the loading without contact from rear passengers to the seat back.

Blue Bird stated that neither the NPRM nor the final rule mention any intent to have small school bus passenger seats withstand the loads resulting from contact by passengers seated behind them. Blue Bird expressed the belief that its analysis shows FMVSS No. 210 loading of small school bus passenger seats equipped with lap/shoulder seat belt assemblies captures the seat's inertial loading defined by FMVSS No. 207 with room to spare. Therefore, in Blue Bird's view, applying FMVSS No. 207's loading simultaneously is excessive. Blue Bird further argued that if the loading resulting from contact by occupants rearward of the seat is a concern, a separate rulemaking pertinent to that condition should be initiated.

NHTSA's Response—We are denying this request. To justify its view that FMVSS No. 210 alone was sufficient to ensure loading by the lap/shoulder seat belt assemblies, Blue Bird presented an analysis in its petition for reconsideration of the final rule similar to what Blue Bird submitted as its comment to the NPRM. In the analysis in its petition for reconsideration of the final rule, Blue Bird applied the ratio of small to large school bus loading reported in the final rule and assumed that there is no rear loading to school bus seats from belted occupants in the rear row (or argued that such rear loading should not be considered). It estimated the anchorage loads using the measured belt loads and computed inertial loads for the seat under consideration without including the rear loading from belted occupants in the rear row.

We believe that Blue Bird's assertion that rear loading should be excluded from consideration is incorrect. The agency's analysis used the maximum loads measured directly at the seat attachment to the vehicle (Table 3.1 in the Technical Analysis supporting the final rule, *see* Docket No. NHTSA–2008–0163) and thus did not rely on a theoretical summation of belt loads and inertial loads as Blue Bird's did. Our analysis of the test data showed that the seat anchorage loads for a given crash pulse and seat type depend on the number of occupants in lap/shoulder belts, the occupants' size, and the contact from passengers rearward of the seat.

The agency's sled testing of school bus seats used a small school bus crash pulse and replicated a typical real world configuration of seats with belted 50th percentile male dummies in one row of school bus seats and both belted and unbelted 50th percentile male dummies in the row directly rear of the seats under consideration. In all the tests where there were belted or unbelted occupants in the row of seats to the rear of the seating row where the attachment loads were measured, the rear row occupants contacted the seats in front of them. The total seat anchorage loads measured in these sled tests included the seat back loading from the rear seat occupants. Therefore, the assertion that the agency did not take these loads into consideration is not correct. Blue Bird's analysis did not take into consideration all the loads experienced by the seat during a crash event, since it does not account for the loading of the seat from rear occupants.

Our analysis of the results of the sled testing showed that the combined FMVSS Nos. 207 and 210 loading levels match the dynamic loading level fairly closely for the seat configuration with two belted 50th percentile male occupants in the front and rear rows. This analysis supports the fact that the FMVSS No. 207 load is not redundant for small school buses and should be considered along with the FMVSS No. 210 loads.

We do not agree with Blue Bird's view that the agency made "no mention of any intent to have small school bus passenger seats withstand the loading resulting from contact by passengers seated behind them" in either the NPRM or final rule. The petitioner stated that we did not provide notice that we would be considering loads from rear passengers when we proposed to apply the FMVSS No. 207 requirements to

[11] S1, *Purpose and Scope,* of FMVSS No. 207 states: "This standard establishes requirements for seats, their attachment assemblies, and their installation to minimize the possibility of their failure by forces acting on them as a result of vehicle impact."

small school bus passenger seats. We disagree, as the purpose and scope of FMVSS No. 207 is to minimize the possibility of the failure of the seat's attachment to the vehicle as a result of forces during a vehicle impact. As such, it would have been remiss of the agency not to have considered all forces, including the forces on the seat from rear occupants, particularly unbelted occupants striking the seat backs, in its analysis.

Throughout the rulemaking, NHTSA discussed the importance it attached to developing performance criteria that accounted for the interaction between fore-and-aft passengers in school bus seats with lap/shoulder belts. The quasi-static test adopted by the final rule for testing school bus passenger seats with lap/shoulder belts was expressly developed to recognize the interaction between fore-and-aft passengers in bus seats. In the NPRM, NHTSA stated that the quasi-static test requirement was proposed "to test school bus seats with lap/shoulder belts, to help ensure that seat backs incorporating lap/shoulder belts are strong enough to withstand the forward pull of the torso belts in a crash and the forces imposed on the seat from unbelted passengers to the rear of the belted occupants." NPRM, 72 FR at 65514. (*See* also final rule, 73 FR at 62766. The agency developed the quasi-static test to ensure "that seat backs incorporating lap/shoulder belts are strong enough to withstand the forward pull of the torso belts in a crash and the forces imposed on the seat from unbelted passengers.")

In the NPRM and final rule (73 FR at 62766), we also described the sequence of events that the agency sought to replicate with the quasi-static test. NHTSA observed this sequence in a sled test involving two unbelted 50th percentile male dummies positioned behind a school bus bench seat containing two restrained 50th percentile male dummies.

1. The knees of the unbelted dummy to the rear struck the back of the forward seat, causing some seat back deflection.

2. The seat back was loaded by the shoulder belt of the restrained dummy in the forward seat.

3. The shoulder belt load was reduced as the seat back to which it was attached deflected forward.

4. The shoulder belt loads reduced to approximately zero when the unbelted dummies' chests struck the forward seat back.

5. The forward seat back deflected further forward as the energy from the unbelted dummies was absorbed.

With the emphasis NHTSA gave throughout the rulemaking to the forces imparted on the seating system from passengers to the rear of the belted occupant, the agency provided ample notice that it would be considering the force generated by rear-seated occupants on a seating system in determining whether FMVSS No. 207 should apply to school bus seating systems.[12]

Considering the above, the agency provided notice that the load from the rear seat passenger would be considered. For those reasons, we will not revisit this issue with a separate rulemaking action to include the load from those passengers. Blue Bird's petition for reconsideration on the FMVSS No. 207 issue is thus denied.

c. Minimum Lateral Anchorage Separation

Final Rule—In the final rule, S5.1.7 of FMVSS No. 222 was amended to require that each passenger seating position with a lap/shoulder restraint system have a minimum seat belt lower anchor lateral spacing of: 280 mm (11.0 in) for flexible occupancy seats with the maximum number of occupants; and 330 mm (13 in) for flexible occupancy seats with the minimum occupancy configuration and for seats with fixed occupant capacity. Under FMVSS No. 210, movable (*e.g.,* sliding) anchorages for an occupant seating position cannot be capable of being closer than 165 mm (6.5 in).

Petition for Reconsideration—In its petition for reconsideration, M2K states that the final rule's minimum lateral anchorage spacing requirement (280 mm for flexible occupancy seats with the maximum number of occupants; and 330 mm for flexible occupancy seats with the minimum occupancy configuration and for seats with fixed occupant capacity) is substantially more restrictive of seat design than the current FMVSS No. 210 requirement (S4.3.1.4), which specifies a minimum lateral spacing of 165 mm (6.5 in). M2K stated that data do not exist to demonstrate that the FMVSS No. 210 anchorage spacing is insufficient. It believed that the minimum lateral anchorage spacing should be the same distance as the hip breadth specified in the final rule update of FMVSS No. 208, which specifies the following occupant anthropometry in S7.1.4 of that standard: Hip breadth of 50th percentile 6-year-old child = 213 mm (8.4 in); hip breadth of 50th percentile 10-year-old child = 257 mm (10.1 in).

M2K asks that the minimum lateral anchorage spacing be equal to the hip width of a 10-year-old (257 mm (10.1 in)) for all school bus passenger seats regardless of whether the seats are designed for "fixed" or "flexible" occupancy seat configurations. Despite being less than the 280 mm (11.0 in) requirement, M2K argued that the 257 mm (10.1 in) value established more stringent design criteria for school buses than the current FMVSS No. 210 requirement of 165 mm (6.5 in) for passenger vehicles and light trucks. The petitioner stated its belief that the 257 mm (10.1 in) value achieves NHTSA's stated goal of increasing protection for child occupants by preventing compressive loading of the iliac crests. M2K recommended that this recommendation would not exclude any of the three current "flex-seat" designs produced by IMMI, CE White, and M2K. M2K believed that the 257 mm (10.1 in) minimum spacing should apply to both fixed and laterally moveable anchorages on lap/shoulder seat belts for flex-seats, as well as for lap belts on fixed-capacity seats.

NHTSA's Response—We are denying this request. The agency specified a minimum lateral anchorage spacing to provide better pelvic load distribution for school bus passengers in frontal impacts. When anchorages are narrower than the occupant pelvis, the lap belt can wrap around the iliac crests and cause compressive loading. As discussed below, a minimum lateral spacing of 257 mm (10.1 in) recommended by M2K does not meet our objective of ensuring that excessive compressive loads are not induced by the school bus seat belt anchorages; the petitioner provided no information supporting its contrary view.

To determine the appropriate value for lateral anchorage separation for the final rule, the agency measured the lower anchorage spacing of several school bus seats with flexible and fixed occupancy. We determined that flexible occupancy seat designs in maximum occupancy configuration are able to achieve a lateral separation of the lower anchorages of no less than 280 mm (11.0 in) simultaneously in any seating position. This minimum lateral spacing of the lower anchorages specified in the final rule for flex-seats in its maximum occupancy configuration is slightly larger than the hip breadth of a typical 10-year-old child (257 mm or 10.1 in) and provides better pelvic load distribution than the 257 mm (10.1 in) lateral anchorage spacing. The 257 mm (10.1 in) lateral anchorage spacing

[12] In the NPRM, while considering the need for the FMVSS No. 207 test requirements for school buses, the agency compared the seat anchor loads in a dynamic sled test with belted occupants in the subject seat and unbelted occupants in the rear with the seat anchor loads generated in the proposed FMVSS Nos. 210, 207, and 222 quasi-static load tests. *See* 72 FR 65518.

recommended by M2K will be insufficient for occupants larger than an average 10-year-old, such as a 95th percentile 10-year-old with a hip breadth of 275 mm (10.8 in [13]). Further, reducing the anchorage spacing to 257 mm (10.1 in) as recommended by the petitioner would not gain additional seating positions for typical school bus seats. M2K provided no data or support for its assertion that a 257 mm (10.1 in) minimum lateral anchorage spacing requirement would prevent compressive loading of the iliac crests.

The 330 mm (13 in) minimum lateral lower anchor spacing specified in the final rule for flexible occupancy seats with the minimum occupancy configuration and for seats with fixed occupant capacity were based on our measurements of typical school bus seats. The 330 mm (13 in) lower anchor spacing is practicable and corresponds to the hip width of 5th percentile female and results in no loss in occupancy for typical school bus seat widths of 762, 991, and 1,143 mm (30, 39, and 45 in). In addition, we believe the 330 mm (13 in) minimum lateral anchor spacing will result in good load distribution on the pelvis for adult size occupants while the 257 mm (10.1 in) lateral anchor spacing recommended by the petitioner may result in excessive compressive loads on the pelvis.

We also note that M2K appears to believe that the minimum anchorage spacing does not apply to sliding anchorages.[14] That understanding is not correct. In determining the minimum width for sliding anchorages, we will assess the minimum anchorage separation simultaneously achievable by the anchorages. That is, a sliding anchorage may increase the anchorage separation for one position while decreasing the separation for the other seating position. However, the configuration that results in the reduced anchorage separation must meet the specified minimum anchorage spacing requirement of 280 mm (11.0 in) simultaneously for all positions.

d. Clarifications of Torso Anchorage Location

Final Rule—NHTSA adopted requirements for the height of the torso belt anchorage to address the comfort of the torso (shoulder) belt and to ensure that the torso belt anchorage is not below the shoulder, which could result in compressive loads on the occupant's spine in a frontal crash. The final rule amended FMVSS No. 210 to require that the torso belt anchor point (where the torso belt first contacts the uppermost torso belt anchorage) be fixed or adjustable to at least 400 mm (15.7 in) above the SgRP for a small occupant seating position of a flexible occupancy seat or at least 520 mm (20.5 in) above the SgRP for all other seating positions. (S4.1.3.2(a), FMVSS No. 210.)

The final rule also required that the height of the torso belt be adjustable from the torso belt anchor point to within at least 280 mm (11 in) vertically above the seating reference point SgRP. Id. The height of the torso belt, as adjusted, is measured by determining the "school bus torso belt adjusted height" as the term is defined in S3 of FMVSS No. 210. "School bus torso belt adjusted height" was added to FMVSS No. 210 to provide an objective means of determining the height position of the adjusted torso belt. "School bus torso belt adjusted height" is defined in S3 as: the vertical height above the SgRP of the point at which the torso belt deviates more than 10 degrees from the horizontal plane when the torso belt is pulled away from the seat by a 20 N (4.5 lb) force at a location on the webbing approximately 100 mm (3.94 in) from the adjustment device and the pulled portion of the webbing is held in a horizontal plane.

Petition for Reconsideration—In its petition for reconsideration, Blue Bird asked NHTSA to clarify the definition of "school bus torso belt adjusted height," particularly with respect to the phrase "deviates more than 10 degrees from the horizontal plane." Blue Bird stated that it is not possible to pull the webbing in a horizontal plane and maintain the original point of belt contact because the arc of the belt forces load the application device downward since the lower anchor point is fixed.

NHTSA's Response—The request is granted. We are clarifying the definition of "school bus torso belt adjusted height" and adding a new Figure 5 in FMVSS No. 210 to set forth in a clearer, more detailed manner how the torso belt adjusted height measurement will be made. The revised definition removes the confusing phrase "deviates more than 10 degrees from the horizontal plane" and adds a new figure to indicate that the measurement is made to a horizontal segment of the torso belt that is located between 25 mm to 75 mm (1 in to 3 in) forward of the adjustment device while applying a horizontal 20 N (4.5 lb) force to the belt in the forward direction. The 20 N (4.5 lb) horizontal force is applied in the forward direction through the webbing at a location greater than 100 mm (3.94 in) forward of the adjustment device (as shown in the new Figure 5) after the retractor has been locked. Figure 5 also illustrates that slack should remain in the portion of the belt between its bottom anchorage and the point of force application. This slack allows the upper portion of the torso belt, between the point of force application and the adjuster, to be pulled in a horizontal plane. We believe these amendments address the petitioner's concerns.

e. Integration of the Seat Belt Anchorages Into the Seat Structure

Final Rule—The final rule specified that with the exception of the last row of seats, seat belt anchorages, both torso and lap, are required to be integrated into the seat structure. This requirement was established to prevent the incorporation of seat belt anchorages at locations that could result in belts potentially injuring unbelted school bus passengers in a crash or obstructing emergency egress.

In the final rule, based on comments received on this issue, we excluded the last row of seats from the requirement because we concurred that the risk of injury or obstruction is lessened for this row of seats. The last row of seats in conventional large and small school buses typically has two seats with a 610 mm (24 in) aisle (large buses) or 559 mm (22 in) aisle (small buses) between them, to provide access to the rear emergency exit door. FMVSS No. 217 imposes requirements for unobstructed passage through the door. Thus, at least in the immediate vicinity of the door, we determined that FMVSS No. 217 would prevent seat belts from being installed in such a way that could impede access to the emergency exit.[15]

Petition for Reconsideration—In its petition for reconsideration, Blue Bird suggested that some "last row" seats should not be excluded from the requirement that the belts be integrated into the seat structure. The petitioner stated that some customers order buses with seat plans that have a wheelchair position located behind the rearmost passenger seat. In other cases, the rearmost passenger seat is forward enough that a side emergency door would be rearward of it. Blue Bird stated that in those cases, the rearmost passenger seat should have its seat belt

[13] Snyder *et al.,* "Anthropometry of infants, children and youth to age 18 for product safety design." University of Michigan report UM–HSRI–77–17, 1977, *http://mreed.umtri.umich.edu/mreed/downloads/anthro/child/Snyder_1977_Child.pdf.*

[14] This was based on our reading of M2K's petition, which was in a sparsely-worded bullet format. One bullet states: "Spacing requirement only applies to fixed-anchorage seat belts, *not* sliding anchorages." (Emphasis in text.) No further discussion was provided by the petitioner.

[15] The requirement for a large school bus emergency exit door opening is found in 49 CFR 571.217 S5.4.2.1(a)(1).

assembly anchorages attached to the seat structure to help prevent a trip hazard.

NHTSA's Response—We have granted this aspect of the petition. We agree with the petitioner that seats with a wheelchair position or an emergency exit behind them should be required to have the seat belt anchorages integrated into the seat structure to help assure that the belts do not present a safety hazard for unrestrained passengers or during emergency evacuation, i.e., to reduce the risk of tripping, entanglement or injury. We have revised S4.1.3.1 to make the exclusion narrower and clearer.

The final rule was ambiguous as to whether school bus seats that had a wheelchair position behind it comprised the last row of the school bus. Today's amendment makes S4.1.3.1 clear that seats in such a row are not excluded from the requirement for integral seat belts.

f. Seat Cushion Latches

Final Rule—The final rule amended S5.1.5 of FMVSS No. 222 to require latching devices for school bus seats that have latches that allow them to flip up or be removed for easy cleaning. We also established a test procedure that would require the latch to activate when a 22 kg (48.4 lb) mass is placed on top of the seat at the seat cushion's center. The 22 kg (48.4 lb) mass is representative of the weight of an average 6-year-old child. The test procedure is to ensure that an unlatched seat cushion will latch when an average 6-year-old child sits on the seat.

Petitions for Reconsideration—Marietta City School District (MCSD) of Ohio stated its belief that the requirement for self-latching seat cushions should be rescinded because the petitioner stated it presents a safety hazard or an "accident waiting to happen." MCSD suggested that students will quickly learn to unlatch the seats and push them out of place, place obstructive items in the latch area, or unlatch them as a prank.

M2K requested clarification of the test procedure for the seat cushion self-latching requirement specified in S5.1.5(a). It asked about the loading rate used to apply the 22 kg (48.4 lb) mass to the seat cushion, where on the seat cushion must the 22 kg (48.4 lb) mass be applied, and whether the 22 kg (48.4 lb) mass is a distributed load across the surface of the cushion or limited to a small percentage of the cushion area. Assuming the final rule is intended to ensure a child's weight alone will engage the latch mechanism, M2K suggested that a 213 mm x 305 mm (8.5 in x 12.2 in) rigid plate be used to "simulate the shape of a single 6-year-old" child, and that the agency should ballast the plate to ensure an evenly-distributed 22 kg (48.4 lb) mass. The petitioner suggested that the plate should be oriented longitudinally above the centerline of the seat and then dropped horizontally onto the seat cushion from a height of 250 mm (9.84 in). The petitioner further suggested that "NHTSA recommend the cushion latch mechanism make a distinct sound, similar to the 'click' of a seat belt latching, when engaged." [16]

In its petition for reconsideration, Blue Bird believed that the test load should be changed from "22 kg (48.4 pound)" to "23.6 kg (52 pound)." Blue Bird argued that no justification was provided for the 22 kg (48 lb) weight and the final rule (73 FR at 62760) stated that the Hybrid III 6-year-old child dummy weighed 52 lb (23.6 kg), so the test weight should be consistent with the Hybrid III 6-year-old dummy used in FMVSS No. 213, *Child Restraint Systems.*

NHTSA's Response—We are denying the petitions except for a few of the requests of M2K. We start by noting that this rulemaking does not require that seat bottom cushions be designed to flip-up without the use of tools. However, such seat cushion designs are popular with many school systems and are widely available in school buses purchased today. MCSD may have misunderstood the final rule in this regard.

We disagree with MCSD that requiring self-latching mechanism on seats designed to flip-up without the use of tools will result in a safety hazard. The agency proposed and implemented the requirement in the final rule because current seats can be left unlatched and, in the event of a rollover crash, the seat frames could become exposed and the bottoms could detach and become projectiles. The self-latching provision established in the final rule ensures that those flip-up seats have a self latching mechanism, and thus promotes safety. The requirement implements a National Transportation Safety Board Recommendation to NHTSA (H–84–75).

To address M2K's suggestions about clarifying the test procedure for the self-latching seat requirement, this final rule makes minor revisions to the regulatory text so that the same tools and procedures can be used for the self latching test as those used for the seat retention test. We are changing the language to indicate a downward force, in Newtons (N), equivalent to the gravitational force exerted by a 22 kg mass ($22 \text{ kg} \times 9.81 \text{ m/s}^2 = 216$ N (48.4 lb)) that is currently specified to be placed on top of the center of the seat cushion be applied within 1 to 5 seconds and maintained for 5 seconds.[17] We are also adding language clarifying that activation of the self-latching mechanism is assessed using the seat cushion retention test procedure and requirement.

We disagree with M2K's suggestion that the agency recommend that seat latch mechanisms make a distinct sound, similar to the "click" of seat belt latching, when engaged. We have no requirements in FMVSS No. 209, "Seat belt assemblies," requiring that the seat belt latching mechanism make an audible "click" sound when engaged. However, manufacturers have voluntarily included this feature for seat belt systems. We are not persuaded that requiring or recommending that the seat cushion self-latching mechanism make an audible sound when engaged is necessary. Manufacturers may include such features if there is a consumer demand for it.

We disagree with Blue Bird's statement that no justification was provided for the 22 kg (48.4 lb) weight and with Blue Bird's suggestion that the test load be changed from "22 kg (48.4 pounds)" to "23.6 kg (52 pounds)" to be consistent with the Hybrid III 6-year-old dummy in FMVSS No. 213. The NPRM and the final rule both indicated that the 22 kg (48.4 lb) mass was used to simulate the weight of an average 6-

[16] M2K also recommended clarification of the test procedure for S5.1.5(b) of the seat cushion retention test. It stated that the method for testing the seat cushion is unclear and suggested clarification to the test procedure to allow, among other things, the load to be uniformly distributed across as much of the underside of the seat cushion as is practicable. M2K's suggestions are outside the scope of this rulemaking because changes to that test were not proposed in the NPRM. The procedure for performing the retention test has been in effect for over 30 years and school bus manufacturers are familiar with how the test is performed. The agency's compliance test procedure for the seat bottom cushion retention and self-latching tests are available on NHTSA's Web site at: *http://www.nhtsa.dot.gov/staticfiles/DOT/NHTSA/Vehicle%20Safety/Test%20Procedures/Associated%20Files/TP222-04.pdf.* The compliance test procedure for seat bottom cushion retention uses a force distribution pad of 102 mm radius between the load fixture and the cushion with a calibrated load cell between the seat cushion and load applicator. If it is not possible to use the distribution pad with 102 mm radius, a rectangular distribution pad of at least the same area is used to apply force to the seat cushion. An upward force equal to 5 times the weight of the seat cushion is applied in not less than 1 second or more than 5 seconds and maintained for 5 seconds.

[17] Some manufacturers suggested that the 22 kg mass be dropped from a specified height. We decline this suggestion because applying the force within 1 to 5 seconds is a simple and practical method of load application and is similar to the force application in the seat retention test.

year-old child.[18] [19] In the October 21, 2008 final rule, at S7.1.4 of FMVSS No. 208, we included anthropometric data to indicate that the weight of a 50th-percentile 6-year-old child is 21.4 kg (47.3 lb). Thus, the agency used a 22 kg (48.4 lb) mass in the test and sufficient reasoning was provided in the NPRM and final rule. Furthermore, we are unconvinced that it is more desirable for the weight used in the test to match the weight of the Hybrid III 6-year-old dummy rather than the weight of an average 6-year-old child.

IV. Comments on Decisions Not Involving Regulatory Text

a. Requiring Large School Buses To Have Seat Belts

Final rule—In the final rule, we specified performance requirements for voluntarily-installed lap and lap/shoulder belts in large school buses to ensure both the strength of the anchorages and the compatibility of the seat with compartmentalization. We could not find a safety need to require passenger seat belt systems on large school buses to supplement the protection provided by compartmentalization.

Post Final Rule Comments—In a document styled as a petition for reconsideration, Public Citizen (PC) objected to the final rule's not requiring lap/shoulder passenger seat belts in new large school buses.[20] PC made several comments related to this issue.

1. PC asked the agency to revise its analysis of the potential benefits of lap/shoulder belts on large buses "to include updated analysis of multiple crash modes including side-impact and rollover. * * *" PC stated that NHTSA "must provide a more credible explanation of its determination of restraint performance in these other crash modes than the correlation to passenger cars."

2. PC objected to the following NPRM statement regarding NHTSA's best practices: "If ample funds were available for pupil transportation, and pupil transportation providers could order and purchase a sufficient number of school buses needed to provide school bus transportation to all children, pupil transportation providers should consider installing lap/shoulder belts on large school buses." The petitioner stated that this "undermines the safest option for children on these buses rather than either refusing or encouraging lap/shoulder belt installation."

3. PC stated that it agrees with the National Transportation Safety Board (NTSB) comment that lap-only belts should not be permitted. PC stated that in 1999 the NTSB suggested there may be potential for greater injuries in occupants restrained using lap-only belts in side crashes. Further, PC stated that we have not discussed how raising the seat back height affects the performance of lap-only belts.

4. PC stated that NHTSA "does not discuss the effect of 'economies of scale' in reducing the incremental cost of adding belts to the buses * * *. Economies of scale and learning by doing can significantly reduce costs, but NHTSA's economic analyses makes no mention of these effects."

NHTSA's Response—The important public policy issue of whether to require the installation of seat belts for school bus passengers is before the agency in petitions for rulemaking submitted by the Center for Auto Safety, PC and a wide variety of school bus safety and medical organizations and associations. The agency will consider PC's comments in responding to those petitions.

b. Defining a "Small" School Bus

Final Rule—In the final rule, NHTSA declined the suggestions of some commenters to raise the gross vehicle weight rating (GVWR) delineation between "small" and "large" school buses from 4,536 kg (10,000 lb) to 6,576 kg (14,500 lb).[21] The agency believed that the suggestion was beyond the scope of the rulemaking.

In administering NHTSA's school bus safety standards, the agency has historically used GVWR to determine the applicability of the FMVSS requirements and has historically used a GVWR of 4,536 kg (10,000 lb) to classify school buses. "Small" school buses (GVWR of 4,536 kg (10,000 lb) or less) have been required to have passenger seat belts while large school buses (GVWR above 4,536 kg (10,000 lb)) have not. The NPRM presented the agency's crash and sled test data relating to small and large school buses and discussed different views on the merits of having seat belts on small and large school buses. Nowhere in the NPRM was there a discussion about reclassifying some large school buses as small school buses or raising the 4,536 kg (10,000 lb) GVWR delineation. Nowhere in the NPRM was it proposed to require passenger seat belt systems in buses that are not currently required to have passenger seat belts, nor was it suggested that those buses should be subject to the other school bus safety standards applicable to small school buses.

Because the NPRM did not discuss the possibility of requiring passenger belt systems in buses between 4,536 kg (10,000 lb) and 6,576 kg (14,500 lb), NHTSA believed that raising the GVWR delineation to 6,576 kg (14,500 lb) and thus subjecting school buses with a GVWR between 4,536 kg (10,000 lb) and 6,576 kg (14,500 lb) to a new set of FMVSS requirements would be beyond the scope of the rulemaking. The agency thus declined to raise the GVWR cut-off in the final rule. We noted that the suggested change in that GVWR limit would not be trivial. Expanding the small school bus category as suggested would have resulted in a substantial increase in the fleet percentage of small school buses, from 7.2 to as much as 24 percent. 73 FR at 62757.

Post Final Rule Comments—In a document styled as a petition for reconsideration, CEW objected to the agency's decision not to increase the GVWR delineation to 6,576 kg (14,500 lb). CEW did not agree that the matter was beyond the scope of this rulemaking. CEW argued that it considers Type A–2 school buses [22] to be "part and parcel" of the intent of the final rule and the agency should make determinations such as whether Type A–2 school buses are more similar to small school buses than large school buses. CEW stated that it is not clear why the agency stated that requiring Type A–2 school buses would raise the percent of school buses that would be required to have seat belts from 7.2 percent to 24 percent and it should have no bearing on whether Type A–2 school buses should have seat belts. CEW stated that the impact of requiring seat belts on Type A–2 school buses should not be material to making a determination for ensuring the safety of school bus passengers. Similarly, in its petition for reconsideration, IC supported increasing the GVWR delineation between small and large school buses. IC stated that there are structural differences between school buses with a GVWR greater than 6,576 kg (16,000 lb) as compared to those with

[18] 72 FR 65515, school bus NPRM.

[19] 73 FR 62756, school bus final rule.

[20] The NPRM did not propose to require passenger seat belts on large school buses. The NPRM discussed NHTSA's reasons for deciding not to propose passenger seat belts on large school buses.

[21] Commenters sought to subject "Type A–2" school buses, which have a GVWR that can range up to 6,576 kg (14,500 pounds), to the requirements for small school buses.

[22] Type A–2 school buses are large school buses with a GVWR between 4,536 kg (10,000 pounds) and 6,576 kg (14,500 pounds). These school buses have never been required to have passenger seat belts.

a GVWR less than or equal to 6,576 kg (16,000 lb).[23]

NHTSA's Response—We stand by our determination that raising the GVWR delineation between small and large school buses to 6,576 kg (14,500 lb) was beyond the scope of the rulemaking, i.e., that adequate notice and an opportunity to comment on raising the GVWR cut-off was not provided by the NPRM. In the NPRM, the agency discussed upgrading the FMVSS No. 222 requirements for small (GVWR 4,536 kg (10,000 lb) or less) school buses, from the current requirement for passenger lap belts to an upgraded requirement for lap/shoulder belts and to raise seat back height. The agency also discussed upgrading the requirement for large (GVWR greater than 4,536 kg (10,000 lb)) school buses, setting performance standards for voluntarily-installed passenger seat belts and raising the seat back height. Type A–2 school buses (GVWR between 4,536 kg (10,000 lb) and 6,576 kg (14,500 lb) are considered "large" school buses and have never been required to have passenger seat belt systems. In the NPRM, we did not broach the issue of requiring some large school buses to have lap/shoulder belts. Newly requiring seat belts on these school buses would have been a significant departure from current requirements and an issue of which the public should have been informed. Likewise, the agency would have benefited from public comment on the issue to ensure that impacts on affected parties (e.g., school bus manufacturers, purchasers, and users) were all well considered.

The CEW's comment regarding requiring the installation of seat belts for passengers on larger school buses is before the agency in petitions for rulemaking submitted by the Center for Auto Safety, PC, and other organizations and associations. The agency will consider PC's comments in responding to those petitions.

c. Preemption

Final Rule—In the October 2008 final rule, NHTSA responded to the requirements of Executive Order (E.O.) 13132 (Federalism) in part by examining whether there might be any possible basis for a judicial finding of implied preemption of State tort law. NHTSA discussed the 2000 Supreme Court case, *Geier* v. *American Honda Motor Co.,* 529 U.S. 861, and explained that when a State requirement stands as an obstacle to the accomplishment and execution of a NHTSA safety standard, the Supremacy Clause of the Constitution makes the State requirement unenforceable. The agency did not express or suggest any intent to preempt State tort law impliedly in the final rule. We stated: "NHTSA has not discerned any potential State requirements that might conflict with the final rule * * *. We cannot completely rule out the possibility that such a conflict might become apparent in the future through subsequent experience with the standard." 73 FR at 62778.

Comment—In a document styled as a petition for reconsideration,[24] AAJ objected to NHTSA's discussion in the October 2008 final rule of *Geier* v. *American Honda Motor Co.,* and the agency's stating that there was the possibility that a conflict might become apparent in the future between a State requirement and the FMVSS. PC stated that the agency "must remove harmful language suggesting that the agency's minimum standards imply preemption of state tort law."

NHTSA's Response—We believe that a fundamental misunderstanding lies at the heart of petitioners' characterization of the discussion in the final rule. AAJ has mistakenly characterized the agency's discussion of implied preemption, a discussion that we included in approximately two dozen other Federal motor vehicle safety standard rulemaking notices issued from February 2007 to November 2008. We explained those discussions at length in a June 14, 2010 final rule on FMVSS No. 305 (75 FR 33515, at 33524–33525), which we believe has addressed the concerns of AAJ and PC on this subject.

To summarize the agency's discussion in the FMVSS No. 305 final rule, in each of the **Federal Register** notices discussing *Geier* and the agency's response to E.O. 13132, NHTSA sought to explain that we had examined whether there might be any possible basis for a judicial finding of implied preemption of state tort law. In all but a few of those notices, we concluded each examination without identifying any potential obstacle or conflict that might give rise to such a finding.[25] The FMVSS No. 305 final rule explained that the agency has increasingly clarified and amplified its discussion responding to E.O. 13132 in an attempt to end the misunderstandings and assuage concerns about the preemption discussion. Readers are referred to that document for a full discussion of the language in question. Similarly, NHTSA has clarified the discussion of E.O. 13132 found in today's document to make it consistent with the FMVSS No. 305 discussion. The agency's discussion in that document and the clarified language in this final rule should eliminate commenters' misunderstandings about this topic.

V. Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866 and is not considered to be significant under E.O. 12866 or the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). NHTSA prepared a final regulatory evaluation (FRE) for the October 21, 2008 final rule.[26] Today's document makes slight changes to the regulatory text of the October 2008 final rule to clarify the rule.

Today's document makes clearer the procedure specifying how we will measure the height of school bus passenger torso belts, and clarifies that a requirement that seat belts be integral to the passenger seat (a requirement adopted to reduce the likelihood of passengers getting injured by or tangled in loose belts) also applies to seats that have wheelchair positions or side emergency doors behind them, even if the seats are in the last row of vehicles. We have also slightly revised the test procedure for testing the self-latching requirement for school bus seat cushions, to specify the weight that is placed on the seat cushion in Newtons, and to specify that the downward force is applied in a one to 5 second timeframe. The changes in today's final rule do not affect the determinations of the FRE prepared for the October 21, 2008 final rule.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory

[23] IC stated in its petition: "School buses with a GVWR of less than 16,000 lbs. are most often based on a passenger or light truck vehicle. School buses with a GVWR greater than 16,000 lbs. are most often an integrated vehicle designed specifically for that application and components and systems are usually similar to medium and heavy duty trucks."

[24] The agency does not consider this to be a petition for reconsideration, as NHTSA's preemption discussion was not a rule.

[25] The October 2008 final rule on FMVSS No. 222 was one of many notices in which we did not identify any potential obstacle or conflict.

[26] NHTSA's FRE for the October 21, 2008 final rule discusses issues relating to the rule's potential costs, benefits and other impacts. The FRE is available at Docket No. NHTSA–2008–0163 and may also be obtained by contacting *http://www.regulations.gov* or by contacting DOT's Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, telephone 202–366–9324.

Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of proposed rulemaking or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR Part 121 define a small business, in part, as a business entity "which operates primarily within the United States." (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. According to 13 CFR 121.201, the Small Business Administration's size standards regulations used to define small business concerns, school bus manufacturers would fall under North American Industry Classification System (NAICS) No. 336111, *Automobile Manufacturing,* which has a size standard of 1,000 employees or fewer. Using the size standard of 1,000 employees or fewer, NHTSA estimates that there are two small school bus manufacturers in the United States (Trans Tech and Van-Con). NHTSA believes that both Trans Tech and Van-Con manufacture small school buses and large school buses.

I hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities. In this final rule, we simply clarify requirements in FMVSS No. 210 and clarify test procedures in FMVSS No. 222. These clarifications will impose no costs on small businesses beyond those described in the Regulatory Flexibility Act section of the final rule of October 21, 2008 (*see* 73 FR at 62777).

Executive Order 13132

NHTSA has examined today's final rule pursuant to Executive Order 13132 (64 FR 43255; Aug. 10, 1999) and concluded that no additional consultation with States, local governments, or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rule does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The final rule does 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."

NHTSA rules can have preemptive effect in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision:

> When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter.

49 U.S.C. 30103(b)(1). It is this statutory command that preempts any non-identical State legislative and administrative law [27] addressing the same aspect of performance.

Second, the Supreme Court has recognized the possibility, in some instances, of implied preemption of State requirements imposed on motor vehicle manufacturers, including sanctions imposed by State tort law. That possibility is dependent upon there being an actual conflict between a FMVSS and the State requirement. If and when such a conflict exists, the Supremacy Clause of the Constitution makes the State requirements unenforceable. *See Geier* v. *American Honda Motor Co.,* 529 U.S. 861 (2000), finding implied preemption of state tort law on the basis of a conflict discerned by the court,[28] not on the basis of an intent to preempt asserted by the agency itself.[29]

NHTSA has considered the nature (*e.g.,* the language and structure of the regulatory text) and objectives of today's final rule and does not discern any existing State requirements that conflict with the final rule or the potential for any future State requirements that might conflict with it. Without any conflict, there could not be any implied preemption of state law, including state tort law.

[27] The issue of potential preemption of state tort law is addressed in the immediately following paragraph discussing implied preemption.

[28] The conflict was discerned based upon the nature (*e.g.,* the language and structure of the regulatory text) and the safety-related objectives of FMVSS requirements in question and the impact of the State requirements on those objectives.

[29] Indeed, in the rulemaking that established the rule at issue in *Geier,* the agency did not assert preemption.

National Environmental Policy Act

NHTSA has analyzed this final rule for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

Paperwork Reduction Act

Under the procedures established by the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. Today's final rule does not establish any new information collection requirements.

National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), "all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments." OMB Circular A–119 "Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities" (February 10, 1998) establishes policies to implement the NTAA throughout Federal executive agencies. In Section 4.a. of OMB Circular A–119, "voluntary consensus standards" are defined as standards developed or adopted by voluntary consensus standards bodies, both domestic and international. After carefully reviewing the available information, NHTSA has determined that there are no voluntary consensus standards relevant to this rulemaking.

Executive Order 12988

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent

with that requirement. The preemptive effect of this final rule has been discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). This final rule will not result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector in excess of $100 million annually.

Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health, or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. This rulemaking is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866.

Executive Order 13211

Executive Order 13211 (66 FR 28355, May 18, 2001) applies to any rulemaking that: (1) Is determined to be economically significant as defined under E.O. 12866, and is likely to have a significantly adverse effect on the supply of, distribution of, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. This rulemaking is not subject to E.O. 13211.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, and Tires.

■ In consideration of the foregoing, NHTSA amends 49 CFR Part 571 as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.210 is amended by revising in S3, the definition for "school bus torso belt adjusted height"; revising S4.1.3.1; revising S4.1.3.2(a); and by adding Figure 5 at the end of the section, to read as follows:

§ 571.210 Standard No. 210; Seat belt assembly anchorages.

* * * * *

S3. *Definitions.*

School bus torso belt adjusted height means the vertical height above the seating reference point (SgRP) of the horizontal plane containing a segment of the torso belt centerline located 25 mm to 75 mm forward of the torso belt height adjuster device, when the torso belt retractor is locked and the torso belt is pulled away from the seat back by applying a 20 N horizontal force in the forward direction through the webbing at a location 100 mm or more forward of the adjustment device as shown in Figure 5.

* * * * *

S4.1.3 *School bus passenger seats.*

S4.1.3.1 For school buses manufactured on or after October 21, 2011, seat belt anchorages for school bus passenger seats must be attached to the school bus seat structure, including seats with wheelchair positions or side emergency doors behind them. Seats with no other seats behind them, no wheelchair positions behind them and no side emergency door behind them are excluded from the requirement that the seat belt anchorages must be attached to the school bus seat structure. For school buses with a GVWR less than or equal to 4,536 kg (10,000 pounds), the seat belt shall be Type 2 as defined in S3. of FMVSS No. 209 (49 CFR 571.209). For school buses with a GVWR greater than 4,536 kg (10,000 pounds), the seat belt shall be Type 1 or Type 2 as defined in S3. of FMVSS No. 209 (49 CFR 571.209).

S4.1.3.2 * * *

(a) For a small occupant seating position of a flexible occupancy seat, as defined in 49 CFR 571.222, the school bus torso belt anchor point must be 400 mm or more vertically above the seating reference point (SgRP) or adjustable to 400 mm or more vertically above the SgRP. For all other seating positions, the school bus torso belt anchor point must be 520 mm or more vertically above the SgRP or adjustable to 520 mm or more vertically above the SgRP. The school bus torso belt adjusted height at each seating position shall be adjustable to no more than 280 mm vertically above the SgRP in the lowest position and no less than the required vertical height of the school bus torso belt anchor point for that seating position in the highest position. (*See* Figure 4.)

* * * * *

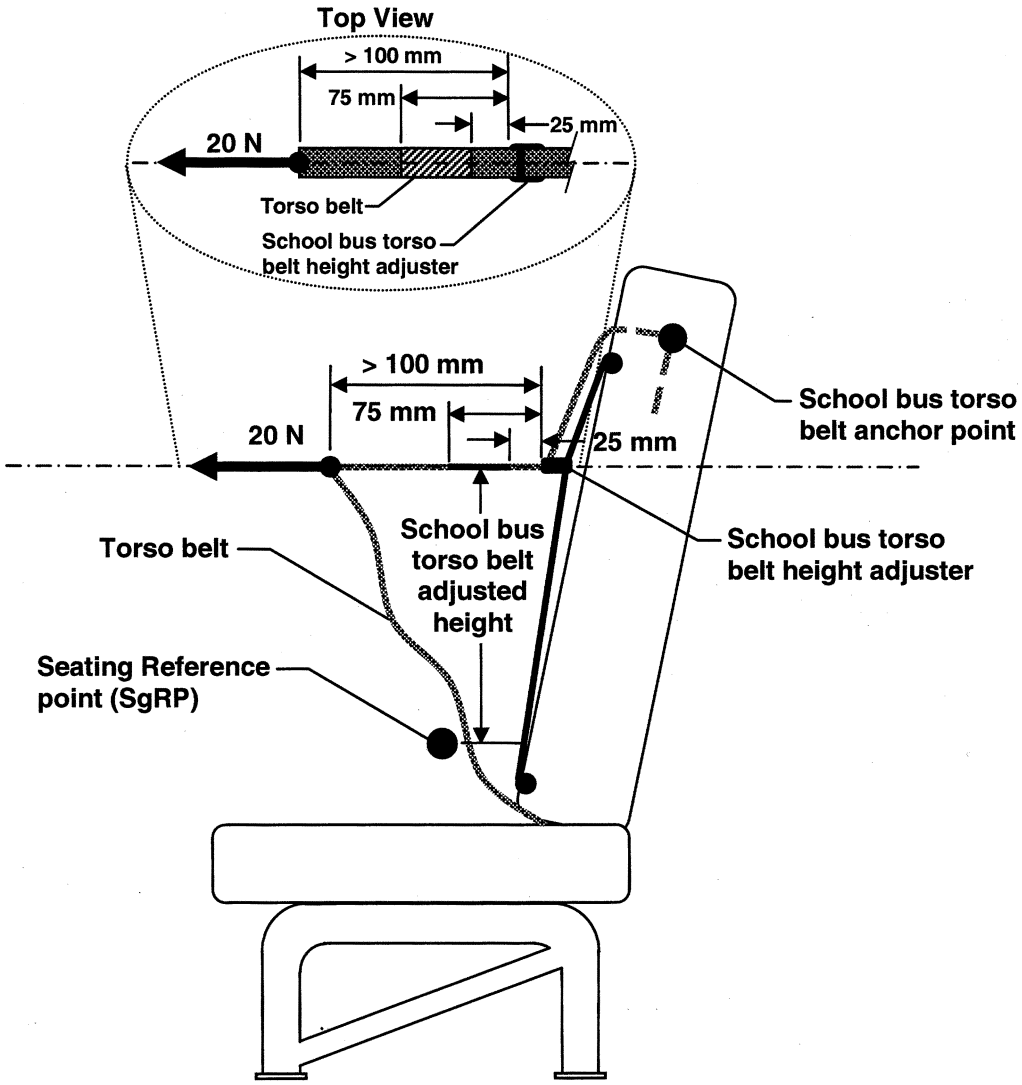

Figure 5 – Minimum school bus torso belt adjusted height measurement

■ 3. Section 571.222 is amended by revising S5.1.5 and adding S5.1.5.1 and S5.1.5.2 to read as follows:

§ 571.222 Standard No. 222; School bus passenger seating and crash protection.

* * * * *

S5.1.5 *Seat cushion latching and retention.*

(a) School bus passenger seat cushions equipped with attachment devices that allow for the seat cushion to be removable without tools or to flip up must have a self-latching mechanism that latches when subjected to the conditions specified in S5.1.5.1. The seat cushion shall not separate from the seat at any attachment point when subjected to the conditions specified in S5.1.5.2 after being subjected to the conditions of S5.1.5.1.

(b) School bus passenger seat cushions that are removable only with the use of tools shall not separate from the seat at any attachment point when subjected to the conditions of S5.1.5.2.

S5.1.5.1 Release the seat cushion self-latching mechanism. Lift the seat cushion then place the seat cushion back in the down position without activating the self-latching mechanism, if possible. Apply a downward force of 216 N (48.4 pounds) to the center of the seat cushion. The downward force shall be applied in any period of not less than 1 and not more than 5 seconds, and maintained for 5 seconds.

S5.1.5.2 Apply an upward force of 5 times the weight of the seat cushion to the center of the bottom of the seat cushion. The upward force shall be applied in any period of not less than 1 and not more than 5 seconds, and maintained for 5 seconds.

* * * * *

Issued on: October 20, 2010.

David L. Strickland,

Administrator.

[FR Doc. 2010–27312 Filed 10–28–10; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 75, No. 209
Friday, October 29, 2010

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 357

[Docket No. APHIS–2009–0018]

RIN 0579–AD11

Lacey Act Implementation Plan; Definitions for Exempt and Regulated Articles

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We are reopening the comment period for our proposed rule that would establish definitions for the terms "common cultivar" and "common food crop." This action will allow interested persons additional time to prepare and submit comments.

DATES: We will consider all comments that we receive on or before November 29, 2010.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0018* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS–2009–0018, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2009–0018.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. George Balady, Senior Staff Officer, Quarantine Policy Analysis and Support, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1231; (301) 734–8295.

SUPPLEMENTARY INFORMATION: On August 4, 2010, we published in the **Federal Register** (75 FR 46859–46861, Docket No. APHIS–2009–0018) a proposal to establish definitions for the terms "common cultivar" and "common food crop." We proposed to establish these definitions in response to recent amendments to the Lacey Act, which expanded the protections of the Act to a broader range of plant species, extended its reach to encompass products, and require that importers submit a declaration at the time of importation for certain plants and plant products. Common cultivars and common food crops are among the categorical exemptions to the provisions of the Act. The Act does not define the terms "common cultivar" and "common food crop" but instead gives authority to the U.S. Department of Agriculture and the U.S. Department of the Interior to define these terms by regulation.

Comments on the proposed rule were required to be received on or before October 4, 2010. We are reopening the comment period on Docket No. APHIS–2009–0018 for an additional 30 days. This action will allow interested persons additional time to prepare and submit comments. We will also consider all comments received between October 5, 2010 (the day after the close of the original comment period), and the date of this notice.

Authority: 16 U.S.C. 3371 *et seq.;* 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 25th day of October 2010.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–27425 Filed 10–28–10; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Parts 761, 763, and 764

RIN 0560–AI03

Farm Loan Programs Loan Making Activities; Correction

AGENCY: Farm Service Agency, USDA.

ACTION: Proposed rule; correction.

SUMMARY: This document contains a correction to the proposed rule titled "Farm Loan Programs Loan Making Activities" that was published September 23, 2010. The Farm Service Agency (FSA) is correcting the Paperwork Reduction Act information since the information collection statement for special direct loan servicing was inadvertently omitted from the proposed rule.

DATES: We will consider comments on the rule that we receive by November 22, 2010.

FOR FURTHER INFORMATION CONTACT: Connie Holman, Senior Loan Officer, USDA FSA LMD, STOP 0522, 1400 Independence Avenue, SW., Washington, DC 20250–0522, (202) 690–0756; fax: (202) 720–6797; e-mail: *connie.holman@wdc.usda.gov.* Persons with disabilities or who require alternative means for communication (Braille, large print, audio tape, *etc.*) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION: On September 23, 2010, FSA published a proposed rule (75 FR 57866–57880) to implement four provisions of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill). There was an inadvertent omission of the Paperwork Reduction Act information for special direct loan servicing in the document. Although the proposed rule does not propose any changes to the 7 CFR part 766, the changes in the proposed rule for equine loans would require use of the forms currently approved for uses related to 7 CFR part 766. Therefore, FSA needs to correct the following information add to the proposed rule published on September 23, 2010.

Correction

On page 57873, the following correction replaces the third sentences in the first paragraph under the heading

"Paperwork Reduction Act": The new information collection requests for Farm Loan Programs, General Administration; Direct Loan Making; regular Direct Loan Servicing; and special Direct Loan Servicing all result from expanding eligibility for EM to cover equine losses; and when approved will be incorporated into the existing approved ICRs (of the same titles) that will be up for a renewal this year.

On page 57874, add the following immediately following the Paperwork Reduction Act information for the "Direct Loan Servicing—Regular" (column 3, above the request for comments):

Title: Direct Loan Servicing—Special.

OMB Control Number: 0560–NEW.

Type of Request: New Collection.

Abstract: This information collection is required to support the proposed regulatory changes that include equine losses as eligible for EM. Some of the same information collection activities that will be used are currently approved for 7 CFR part 766, Direct Loan Servicing—Special, which establishes the requirements related to special servicing actions associated with direct loans including emergency loans. Emergency loan applicants tend to pose a higher economic risk of loss than those operations financed by commercial creditors. Information collections established in the regulations are necessary for FSA to actively supervise and provide credit counseling, management advice, and financial guidance.

Estimate of Burden: Public reporting for this collection of information is estimated to average 47 minutes per response.

Type of Respondents: Individuals or households, businesses or other for profit, and farms.

Estimated Number of Respondents: 7.

Estimated Number of Responses per Respondent: 2.5.

Estimated Total Annual Number of Responses: 18.

Estimated Total Annual Burden on Respondents: 26 hours.

Once this information collection request is approved, FSA will incorporate this collection into existing collections package 0560–0233.

Signed in Washington, DC, on October 21, 2010.

Jonathan W. Coppess,

Administrator, Farm Service Agency.

[FR Doc. 2010–27227 Filed 10–28–10; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1084; Directorate Identifier 2010–CE–056–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company (Cessna) Model 402C Airplanes Modified by Supplemental Type Certificate (STC) SA927NW and Model 414A Airplanes Modified by STC SA892NW

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD would require a complete inspection of the flap system and modification of the flap control system. This proposed AD was prompted by a report of a Cessna Model 414A airplane modified by STC SA892NW that experienced an asymmetrical flap condition causing an un-commanded roll when the pilot set the flaps to the approach position. We are proposing this AD to prevent failure of the flap system, which could result in an asymmetrical flap condition. This condition could result in loss of control.

DATES: We must receive comments on this proposed AD by December 13, 2010.

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

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

For service information identified in this proposed AD, contact Sierra Industries, Ltd., 122 Howard Langford Drive, Uvalde, Texas 78801; telephone: 888–835–9377; e-mail: *info@sijet.com;* Internet: *http://www.sijet.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 regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Werner Koch, Aerospace Engineer, Fort Worth Airplane Certification Office, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; phone: (817) 222–5133; fax: (817) 222–5960; e-mail: *werner.g.koch@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–1084; Directorate Identifier 2010–CE–056–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We received a report of a Cessna Model 414 airplane, modified by Sierra Industries, Ltd., STC SA892NW (formerly held by Robertson Aircraft Corporation) that experienced an asymmetrical flap condition causing an un-commanded roll when the pilot set the flaps to the approach position. The flap preselect cable connects to the arm assembly and provides the flap position to the flap selector to close the position loop for the flap position. Micro switches are located on the arm assembly and provide the electrical signal for the arm position.

STC SA927NW and STC SA892NW use the original production preselect cable. However, the STCs added an extension to the arm assembly that

requires increased travel of the preselect cable to obtain the same rotation as previously obtained with the shorter arm assembly. To obtain the same arm assembly rotation, the preselect cable must travel approximately an additional .75 inch. However, the original cable has internal mechanical stops that prevent it from traveling the additional distance. The cable's internal stops are contacted by a smaller rotation displacement of the arm assembly. Since more linear displacement of the cable is required to obtain the same switch action, the internal mechanical stops of the cable are reached before the switches designed to stop the motion of the flaps activate.

As a result, when the internal stops in the cable are contacted, the rotation of the arm assembly carrying the micro switches stops and the switch to stop the drive motor is not activated. Because the switch is not activated, the motor continues to run until either the motor drive shear pin fails, a cable breaks, the structural bracket breaks, or the secondary switches stop the motor before something breaks. The sequence was verified on the reported airplane by the rigging, installation, and operation of an STC production configuration.

This condition, if not corrected, could result in an asymmetrical flap condition. This failure could lead to loss of control.

Relevant Service Information

We reviewed Sierra Industries, Ltd. Service Bulletin SI09–82 Series–1, Rev. IR, dated September 8, 2010. The service information describes procedures for inspecting the flap system, installing a new preselect cable with increased internal stroke, making additional component modifications, and installing and rigging the flap control system.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD affects 150 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect the flap system and modify/replace the flap preselect control cable.	20 work-hours × $85 per hour = $1,700	$1,000	$2,700	$405,000

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Cessna Aircraft Company: Docket No. FAA–2010–1084; Directorate Identifier 2010–CE–056–AD.

Comments Due Date

(a) We must receive comments by December 13, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Cessna Aircraft Company (Cessna) Model 402C airplanes modified by Supplemental Type Certificate (STC) SA927NW and Model 414A airplanes modified by STC SA892NW, all serial numbers, that are certificated in any category.

Subject

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 57, Wings.

Unsafe Condition

(e) This AD was prompted by a report of a Cessna Model 414A airplane modified by STC SA892NW that experienced an asymmetrical flap condition causing an uncommanded roll when the pilot set the flaps to the approach position. We are issuing this AD to prevent failure of the flap system, which could result in an asymmetrical flap condition. This condition could result in loss of control.

Compliance

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

Required Actions

(g) Within 60 days after the effective date of this AD, do a complete inspection of the flap system following the Inspection Instructions section of Sierra Industries, Ltd. Service Bulletin SI09–82 Series–1, Rev. IR, dated September 8, 2010.

(h) Before further flight after the inspection required in paragraph (g) of this AD where any damage to the flap bellcrank or bellcrank mounting structure is found, repair the damage and modify the flap control system following the Accomplishment Instructions of Sierra Industries, Ltd. Service Bulletin SI09–82 Series–1, Rev. IR, dated September 8, 2010.

(i) Within 180 days after the effective date of this AD where damage to the flap bellcrank or bellcrank mounting structure is not found during the inspection required in paragraph (g) of the AD, modify the flap control system following the Accomplishment Instructions of Sierra Industries, Ltd. Service Bulletin SI09–82 Series–1, Rev. IR, dated September 8, 2010.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Fort Worth Airplane Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

(2) Before using any approved AMOC, notify your Principal Maintenance Inspector or Principal Avionics Inspector, as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

Related Information

(k) For more information about this AD, contact Werner Koch, Aerospace Engineer, Fort Worth Airplane Certification Office, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; phone: (817) 222–5133; fax: (817) 222–5960; e-mail: *werner.g.koch@faa.gov.*

(l) For service information identified in this AD, contact Sierra Industries, Ltd., 122 Howard Langford Drive, Uvalde, Texas 78801; telephone: 888–835–9377; e-mail: *info@sijet.com;* Internet: *http://www.sijet.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 October 25, 2010.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–27460 Filed 10–28–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM09–19–000]

Western Electric Coordinating Council; Qualified Transfer Path Unscheduled Flow Relief Regional Reliability Standard

October 21, 2010.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: Under section 215 of the Federal Power Act, the Federal Energy Regulatory Commission (Commission) proposes to approve regional Reliability Standard IRO–006–WECC–1 (Qualified Transfer Path Unscheduled Flow Relief) submitted to the Commission for approval by the North American Electric Reliability Corporation. While we propose to approve the regional Reliability Standard, as discussed in this Notice of Proposed Rulemaking, IRO–006–WECC–1 raises some concerns about which the Commission requests additional information. Depending upon the responses received, in the Final Rule the Commission may, as a separate action under section 215(d)(5) of the FPA, direct the Western Electricity Coordinating Council to develop modifications to the regional Reliability Standard to address the issues identified.

DATES: Comments are due December 28, 2010.

ADDRESSES: Interested persons may submit comments, identified by Docket No. RM09–19–000, by any of the following methods:

• *Agency Web Site: 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.* Commenters unable to file comments electronically must mail or hand deliver an original copy of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426. These requirements can be found on the Commission's Web site, *see, e.g.,* the "Quick Reference Guide for Paper Submissions," available at *http://www.ferc.gov/docs-filing/efiling.asp* or via phone from FERC Online Support at 202–502–6652 or toll-free at 1–866–208–3676.

FOR FURTHER INFORMATION CONTACT:

Mindi Sauter (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6830.

Danny Johnson (Technical Information), Office of Electric Reliability, Division of Reliability Standards, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8892.

SUPPLEMENTARY INFORMATION:

Notice of Proposed Rulemaking

1. Under section 215 of the Federal Power Act (FPA),[1] the Commission proposes to approve regional Reliability Standard IRO–006–WECC–1 (Qualified Transfer Path Unscheduled Flow Relief) submitted to the Commission for approval by the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO). While we propose to approve the regional Reliability Standard, as discussed in this Notice of Proposed Rulemaking, IRO–006–WECC–1 raises some concerns about which the Commission requests additional information. Depending upon the responses received, the Commission may, in the Final Rule, direct the Western Electricity Coordinating Council (WECC) to develop modifications to the regional Reliability Standard to address the issues identified.

I. Background

A. Section 215 of the FPA and NERC Reliability Standard IRO–006

2. Section 215 of the FPA requires a Commission-certified ERO to develop mandatory and enforceable Reliability Standards, which are subject to Commission review and approval.[2] Approved Reliability Standards are enforced by the ERO, subject to Commission oversight, or by the Commission independently.

3. On March 16, 2007, the Commission issued Order No. 693 approving 83 Reliability Standards proposed by NERC, including Reliability Standard IRO–006–3, titled "Reliability Coordination—Transmission Loading Relief." [3] In

[1] 16 U.S.C. 824o.

[2] The Commission certified NERC as the ERO in July 2006. *North American Electric Reliability Corp.,* 116 FERC ¶ 61,062 (ERO Certification Order), *order on reh'g and compliance,* 117 FERC ¶ 61,126 (2006), *aff'd sub nom. Alcoa, Inc.* v. *FERC,* 564 F.3d 1342 (DC Cir. 2009).

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

addition, the Commission directed the ERO to develop modifications to IRO–006–3 and other approved Reliability Standards to address specific issues identified by the Commission, pursuant to section 215(d)(5) of the FPA.

4. NERC Reliability Standard IRO–006–3 establishes a Transmission Loading Relief (TLR) process for use in the Eastern Interconnection to alleviate loadings on the system by curtailing or changing transactions based on their priorities and according to different levels of TLR procedures. Requirement R2.2 provides that "the equivalent Interconnection-wide transmission loading relief procedure for use in the Western Interconnection is the WECC Unscheduled Flow Mitigation Plan." This document provides detailed instructions for addressing unscheduled flows, *e.g.,* parallel path flows, based on the topography and configuration of the Bulk-Power System in the Western Interconnection. The Unscheduled Flow Mitigation Plan identifies nine "steps" to address unscheduled flows. In the first three steps, the Mitigation Plan relies on phase angle regulators, series capacitors, and back-to-back DC lines to mitigate contingencies without curtailing transactions. Steps four and above involve curtailment of transactions.

5. On March 19, 2009, the Commission approved IRO–006–4, which modified the prior version of the Reliability Standard and addressed the Commission's directives from Order No. 693.[4] The Commission subsequently accepted an erratum to that Reliability Standard that corrected the reference in Requirement R1.2 to the Unscheduled Flow Mitigation Plan (Mitigation Plan).[5]

B. WECC Delegation Agreement and WECC Regional Reliability Standard IRO–STD–006–0

6. On April 19, 2007, the Commission approved delegation agreements between NERC and each of the eight Regional Entities, including WECC.[6] Pursuant to such agreements, the ERO delegated responsibility to the Regional Entities to enforce the mandatory, Commission-approved Reliability Standards. In addition, the Commission approved, as part of each delegation agreement, a Regional Entity process for developing regional Reliability Standards. In the Delegation Agreement Order, the Commission accepted WECC as a Regional Entity organized on an Interconnection-wide basis and accepted WECC's Standards Development Manual, which sets forth the process for development of WECC's Reliability Standards.[7]

7. On June 8, 2007, the Commission approved eight WECC regional Reliability Standards that apply in the Western Interconnection, including IRO–STD–006–0.[8] The regional Reliability Standard applies to transmission operators, load-serving entities and balancing authorities within the Western Interconnection. Currently effective IRO–STD–006–0 addresses the mitigation of transmission overloads due to unscheduled line flow on specified paths. Specifically, Requirement R1 of IRO–STD–006–0 states that:

> WECC's Unscheduled Flow Mitigation Plan (Plan) * * * specifies that members shall comply with requests from (Qualified) Transfer Path Operators to take actions that will reduce unscheduled flow on the Qualified Path in accordance with the table entitled "WECC Unscheduled Flow Procedure Summary of Curtailment Actions," which is located in Attachment 1 of the Plan.[9]

The regional Reliability Standard then provides excerpts from the plan that describe actions entities must take to address unscheduled flow.

8. The June 8, 2007 Order directed WECC to develop certain modifications to the eight WECC Reliability Standards to address issues identified by the Commission. With respect to IRO–STD–006–0, the Commission directed WECC to clarify the term "receiver" used in the Reliability Standard. The Commission also directed WECC to address concerns raised by a commenter regarding WECC's inclusion of load-serving entities, which may be unable to meet the Reliability Standard's requirements, in the applicability section of the Reliability Standard.[10] The Commission directed WECC to remove a Sanctions Table (identifying a maximum penalty of $10,000 per violation) that is inconsistent with the NERC Sanctions Guidelines. The Commission also directed WECC to address NERC's concerns regarding formatting, use of standard terms, and the need for greater specificity in the actions that a responsible entity must take.

II. Petition for Proposed Regional Reliability Standard IRO–006–WECC–1

A. Proposed Regional Reliability Standard

9. In a June 17, 2009 filing, NERC requests Commission approval of proposed regional Reliability Standard IRO–006–WECC–1, which was developed in response to the Commission's directives in the June 8, 2007 Order, to replace the currently effective regional Standard.[11] NERC states that the purpose of IRO–006–WECC–1 is to mitigate transmission overloads due to unscheduled flow on Qualified Transfer Paths. Under the Reliability Standard, reliability coordinators are responsible for initiating schedule curtailments and balancing authorities are responsible for implementing the curtailments. Specifically, proposed regional Reliability Standard IRO–006–WECC–1 contains the following two Requirements:

> R.1. Upon receiving a request of Step 4 or greater (*see* Attachment 1–IRO–006–WECC–1) from the Transmission Operator of a Qualified Transfer Path, the Reliability Coordinator shall approve (actively or passively) or deny that request within five minutes.
>
> R.2. The Balancing Authorities shall approve curtailment requests to the schedules as submitted, implement alternative actions, or a combination there of that collectively meets the Relief Requirement.

An attachment to IRO–006–WECC–1 summarizes the nine steps and related actions to address unscheduled flows.

10. NERC states that the revised regional Reliability Standard addresses the Commission's prior concerns by removing load-serving entities as an applicable entity, no longer referring to receivers, and addressing formatting changes required by NERC and the Commission's June 8, 2007 Order. Further, NERC states the proposed Reliability Standard is justified on the basis that the regional Reliability Standard's requirements are more stringent than those contained in the associated NERC Reliability Standard IRO–006–4. NERC explains that the NERC Reliability Standard IRO–006–4

[4] *Modification of Interchange and Transmission Loading Relief Reliability Standards; and Electric Reliability Organization Interpretation of Specific Requirements of Four Reliability Standards,* Order No. 713–A, 126 FERC ¶ 61,252 (2009).

[5] *North American Electric Reliability Corp.,* Docket No. RD09–9–000 (Dec. 10, 2009) (unpublished letter order). Note that Reliability Standard IRO–006–4.1, Requirement R1.2 refers to the "WECC Unscheduled Flow Reduction Procedure," which is Attachment 1 to the Mitigation Plan, the term we use herein.

[6] *See North American Electric Reliability Corp.,* 119 FERC ¶ 61,060, *order on reh'g,* 120 FERC ¶ 61,260 (2007) (Delegation Agreement Order).

[7] *Id.* P 469–470.

[8] *North American Electric Reliability Corp.,* 119 FERC ¶ 61,260 (June 8, 2007 Order).

[9] Regional Reliability Standard IRO–STD–006–0, *available at http://www.wecc.biz/Standards/Approved%20Standards/IRO-STD-006-0.pdf.*

[10] June 8, 2007 Order, 119 FERC ¶ 61,260 at P 70–71.

[11] North American Electric Reliability Corp., June 17, 2009 Petition for Approval of Proposed Western Electricity Coordinating Council Regional Reliability Standard IRO–006–WECC–1 (NERC Petition).

requires a reliability coordinator experiencing a potential or actual System Operating Limit (SOL) or Interconnection Reliability Operating Limit (IROL) violation to take appropriate actions to relieve transmission loading using local or Interconnection-wide procedures. According to NERC, Requirement R1 of the proposed regional Reliability Standard IRO–006–WECC–1 goes beyond the NERC requirements by establishing a process to reduce schedules that prevents potential overloads during the next operating hour. In addition, the proposed Reliability Standard requires each reliability coordinator to approve or deny a request submitted by a Qualified Transfer Path transmission operator within five minutes. Requirement R2 of the proposed regional Reliability Standard requires each balancing authority to approve curtailment requests to the schedules as submitted, implement alternative actions, or a combination thereof, which collectively meet the relief requirement.

B. Concerns Raised by NERC Regarding the WECC Proposal

11. In the Petition, NERC explains that, when WECC submitted IRO–006–WECC–1 for NERC's review, NERC was concerned that the proposed Standard no longer contains requirements that are more stringent than the continent-wide NERC Reliability Standard IRO–006–4, which was the main justification for consideration of IRO–006–WECC–1 as the regional Reliability Standard.[12] NERC states that, at the direction of the NERC Board of Trustees, NERC staff met several times with WECC staff to discuss its concerns with the proposed regional Reliability Standard.

1. Pre-Curtailment Actions

12. In its Petition, NERC expressed several concerns. First, NERC was concerned that the proposed Standard only includes the curtailment portion of the Mitigation Plan. In contrast, the current regional Reliability Standard IRO–STD–006–0 references WECC's Mitigation Plan, which contains directions in steps one through three to reduce flows through use of phase-angle regulators, series capacitors, and back-to-back DC lines before transaction curtailment.

13. According to the NERC Petition, WECC explained that the proposed regional Reliability Standard contains the curtailment portion of the Mitigation Plan "because the remaining items contain procedural requirements explaining 'how,' not 'what.'" [13] WECC explained to NERC that two WECC regional Reliability Standards work together. Proposed IRO–006–WECC–1 prevents overloads during the next hour by requiring applicable entities to reduce schedules and adjust generation patterns. In addition, regional Reliability Standard TOP–007–WECC–1 (System Operating Limits), contains instructions for mitigation of an actual, real-time overload.[14] According to WECC, these regional Reliability Standards, combined, ensure that the transmission operator will utilize the phase-angle regulators, series capacitors, and back-to-back DC lines before transaction curtailment.

14. In addition, NERC provided additional supplemental information in Exhibit C of its Petition regarding how WECC envisions the implementation of proposed regional Reliability Standard IRO–006–WECC–1. Exhibit C contains the complete development record of proposed regional Reliability Standard IRO–006–WECC–1 and includes WECC's undated response to NERC's concerns regarding the interaction between TOP–007–WECC–1 and IRO–006–WECC–1.[15]

15. Specifically, NERC raised a concern that "IRO–006–WECC–1 removed a requirement for the Transmission Operator (TOP) to request relief through the WECC Qualified Path Unscheduled Flow Relief Procedure when a qualified transfer path exceeded or was close to exceeding a System Operating Limit (SOL)." In response, WECC stated that "the requirements of another WECC regional reliability standard, TOP–STD–007–0 (interim approved Tier 1 standard), as well as the WECC proposed replacement regional reliability standard TOP–007–WECC–1, require the TOP to take actions to ensure that SOLs are not exceeded." [16]

16. WECC further explained that TOP–WECC–007–1 requires Transmission Operators to keep path flows and schedules at or below SOLs for 40 identified paths. WECC stated that "TOPs, in coordination with the Reliability Coordinators, may select from several methods" to reduce flows, and provide several examples, such as on path schedule curtailments, adjust controllable devices (*e.g.,* phase shifters, series capacitors), use of the WECC Mitigation Plan if the path experiencing the loading is a qualified path, or local procedures, as well as other examples. WECC further explained that the "key point" with respect to qualified paths, "is that it is TOP–007–WECC–1, not IRO–006–WECC–1, that requires the TOP to take actions to reduce flows to within SOLs." [17] In situations where the Transmission Operator has taken action to reduce the flows on qualified paths, but the flows remain near or exceeding the SOL, "IRO–006–WECC–1 requires curtailment of Contributing Schedules or provision of comparable relief through other means, as identified in the Unscheduled Flow Reduction Procedure [a portion of the Mitigation Plan]." [18] WECC further notes that "implementation of the [Mitigation Plan] is one of the options available to the TOP to prevent potential violations of TOP–007–WECC–1. If the TOP is able to take other actions to keep actual flows within SOLs, the TOP may not need or desire to utilize the [Mitigation Plan]. * * * However, if the TOP chooses the [Mitigation Plan] as one of the alternatives to manage flows, the requirements of IRO–006–WECC–1 make it mandatory for entities with Contributing Schedules to curtail these schedules, upon approval by the [reliability coordinator], to provide the necessary relief." [19] WECC summarizes the interaction between the two regional standards, stating that "IRO–006–WECC–1 provides entities with the necessary motivation to curtail off-path schedules and adjust generation to prevent and/or reduce qualified path overloads, thus facilitating compliance with TOP–007–WECC–1." [20]

[12] *Id* 26–27.

[13] *Id.* at 30.

[14] NERC's petition for approval of regional Reliability Standard TOP–007–WECC–1 is currently pending before the Commission in Docket No. RM09–14–000.

[15] The document is titled, "Interaction between TOP–007–WECC–1 and IRO–006–WECC–1."

[16] Exhibit C to NERC Petition, Interaction between TOP–007–WECC–1 and IRO–006–WECC–1 at 1.

Requirement WR1 of the currently applicable regional Reliability Standard, TOP–STD–007–0 provides, in part, that "Actual power flow and net scheduled power flow over an interconnection or transfer path shall be maintained within Operating Transfer Capability Limits." The NERC Glossary defines Operating Transfer Capability Limit as "the maximum value of the most critical system operating parameter(s) which meets: (a) Precontingency criteria as determined by equipment loading capability and acceptable voltage conditions, (b) transient criteria as determined by equipment loading capability and acceptable voltage conditions, (c) transient performance criteria, and (d) post-contingency loading and voltage criteria."

Proposed regional Reliability Standard TOP–007–WECC–1, Requirement R1 provides that "When the actual power flow exceeds an SOL for a Transmission path, the Transmission Operators shall take immediate action to reduce the actual power flow across the path such that at no time shall the power flow for the Transmission path exceed the SOL for more than 30 minutes."

[17] Exhibit C to Petition, Interaction between TOP–007–WECC–1 and IRO–006–WECC–1 at 2.

[18] *Id.* at 2–3.

[19] *Id.* at 3.

[20] *Id.* at 4.

2. Role of Reliability Coordinator

17. NERC's second concern with the proposed regional Standard was with regard to the role of the reliability coordinator. According to the NERC Petition, NERC staff requested clarification regarding the role of the reliability coordinator in initiating curtailments. In the proposed Reliability Standard, IRO–006–WECC–1, the reliability coordinator is only obligated to respond to a transmission operator's curtailment request. However, there is no mention in either the proposed Standard IRO–006–WECC–1 or TOP–007–WECC–1 that the entity with the wide-area view, the reliability coordinator, can initiate curtailment requests if needed for reliability. Nor do they indicate what recourse the transmission operator has if the reliability coordinator denies the request for curtailment. WECC confirmed that the reliability coordinator does not initiate curtailments but, rather, approves the transmission operator's request for curtailment. Requirement R1 of proposed IRO–006–WECC–1 requires the reliability coordinator to approve or deny the request, which is accomplished using the OATI webSAS tool.[21] Unless the reliability coordinator denies the request for reliability reasons, the webSAS tool, through preprogrammed algorithms, identifies the off-path schedules to curtail and submits those curtailments to the entities identified on the tags. WECC also confirmed that the reliability coordinator has the wide-area view and, when a transmission operator requests curtailment of off-path schedules, the reliability coordinator may deny the request for reliability reasons. In that situation, the transmission operator, in coordination with the reliability coordinator, would then follow one of the other WECC or local procedures for reducing path flow.

18. NERC states that, as a result of WECC's clarification, the NERC Board of Trustees approved proposed IRO–006–WECC–1 on February 10, 2009.

III. Discussion

19. Under section 215(d)(2) of the FPA, we propose to approve regional Reliability Standard IRO–006–WECC–1, as just, reasonable, not unduly discriminatory or preferential, and in the public interest. In addition, we ask WECC, the ERO, and other interested entities to provide further clarification regarding several aspects of the proposed regional Reliability Standard. Depending on the responses to our concerns, we may determine that it is appropriate to direct WECC to develop modifications to the proposed regional Reliability Standard under section 215(d)(5) of the FPA.

20. It is the Commission's view that the proposed regional Reliability Standard adequately addresses a number of the directives identified in the June 8, 2007 Order and represents improvement to the standard. For example, it appears that IRO–006–WECC–1 adequately addresses our concern regarding use of the term "receiver" by removing the term, and thereby eliminating potential confusion that could result from the undefined term. The proposed regional Reliability Standard also provides additional clarity by removing load-serving entities from the applicability section of the standard. This is beneficial since, as noted by NERC and WECC, load-serving entities may be unable to meet the Reliability Standard's requirements with regard to curtailment procedures. Further, unlike the currently effective regional Reliability Standard, IRO–006–WECC–1 would include reliability coordinators as an applicable entity and would address their role in curtailment procedures.

21. As indicated by NERC, proposed IRO–006–WECC–1 appears to go beyond the corresponding NERC Reliability Standard by requiring a reliability coordinator to approve or deny a request submitted by a transmission operator within five minutes.

22. The WECC Reliability Standard also addresses formatting concerns, including the use of standard terms, conformance with NERC's Violation Severity Level and Violation Risk Factor matrix, and the elimination of a WECC sanction table (with a maximum penalty of $10,000) and "Excuse of Performance" section in the currently effective WECC standard that significantly differ from NERC's Sanction Guidelines. In addition, IRO–006–WECC–1 ensures that the requirements are part of the regional Reliability Standard rather than embedded in a filing. For these reasons, we propose to approve the proposed WECC Reliability Standard.

Commission Concerns

23. However, in addressing the Commission's directives, such as the removal of load-serving entities and the term "receivers," it appears that WECC has raised some other concerns that create possible conflicts or inconsistencies between proposed IRO–006–WECC–1 and NERC's currently effective IRO–006–4, as discussed below. In modifying the regional Reliability Standard, WECC has eliminated the reference to the Mitigation Plan, included in both the NERC standard, IRO–006–4, and the currently effective WECC standard. As mentioned above, the Mitigation Plan includes nine steps to address unscheduled flows; steps four and above requiring varying levels of curtailments of transactions. Requirement R1 of proposed IRO–006–WECC–1 provides that "[u]pon receiving a request of Step 4 or greater * * * from the Transmission Operator of a Qualified Transfer Path, the Reliability Coordinator shall approve * * * or deny that request within five minutes"; however, steps one through three are no longer referenced in IRO–006–WECC–1 or in the related regional Standard TOP–007–WECC–1.

24. On the other hand, NERC Reliability Standard IRO–006–4 continues to specifically reference the Mitigation Plan with regard to transmission loading relief in the Western Interconnection. However, the Mitigation Plan has not been updated to include the requirement that the reliability coordinator act on a request for relief within five minutes, an improvement contained in WECC's proposed IRO–006–WECC–1. Likewise, the Mitigation Plan continues to reference and require action by "receivers," while that term is removed from the proposed WECC regional Reliability Standard, in conformance with the Commission's directive in the June 8, 2007 Order.

25. Because of these dichotomies between the proposed regional Reliability Standard and the corresponding NERC Standard, we have several areas of concern regarding how the proposed regional Standard would work in practice to ensure Reliable Operation in the Western Interconnection. Specifically, we are concerned with: (1) How entities will know whether to follow the national or regional Standard in a given situation; (2) WECC's and NERC's reliance on TOP–007–WECC–1 to ensure that entities manage power flows using steps one through three of the Mitigation Plan prior to requesting curtailments; (3) how the webSAS tool will work with respect to the national and regional Standard; and (4) the potential reliability impact of reliability coordinators' inability to request curtailments.

[21] The webSAS (Security Analysis System) is a proprietary Internet based application that is used by WECC to analyze, initiate, communicate, and provide compliance reports for implementation of the Unscheduled Flow Reduction Procedure. It is available by subscription through the vendor to provide notification of Unscheduled Flow Events, calculate and display required relief, and provide a rapid method of transaction curtailments.

26. With regard to our first concern, it is our understanding that in responding to unscheduled flows on qualified paths, entities would initially follow the requirements of the current regional TOP–007 Reliability Standard (whichever version is in effect), which would allow the option of using steps one through three of the Mitigation Plan. Although the requirement in the current regional Reliability Standard TOP–STD–007–0 does not specifically require Transmission Operators to perform steps one through three of the Mitigation Plan, it requires Transmission Operators to maintain flow within Operating Transfer Capability Limits, which gives the Transmission Operator the authority to take whatever actions necessary to return within its Operating Transfer Capability Limit or SOL (depending on the version of the Standard). Specifically, as described above, the approved regional Reliability Standard TOP–STD–007–0 does not allow for operation exceeding an Operating Transfer Capability Limit for longer than a specified period of time. Additionally, without prejudging the proposal pending before us in Docket No. RM09–9–000, we note that proposed regional Standard TOP–WECC–007–0 does not allow for operation exceeding an SOL for longer than a specified period of time and also requires a transmission operator to take immediate action to reduce such flows. Thus, as WECC explained with respect to the proposed TOP–007–WECC–1, one of the Transmission Operator's options for ensuring that flows are maintained within Operating Transfer Capability Limits is to utilize steps one through three. Both of these regional Reliability Standards give the transmission operator authority to use various means to ensure that the system is returned to within an SOL or IROL, including utilizing the options listed within steps one through three of the Mitigation Plan if deemed appropriate. If those steps prove ineffective, it is our understanding that a transmission operator may choose, if the path qualifies, to request curtailments, which would require reliability coordinators and balancing authorities to follow steps four through nine of the proposed regional Standard, IRO–006–WECC–1. Because of this, we are unclear how the NERC IRO–006–4 national Reliability Standard would interact with the regional Reliability Standards, or if the national and regional Standards are duplicative. Accordingly, we request comment from NERC, WECC, and other interested entities regarding the interaction between the differing requirements contained in the regional versus national Reliability Standard. We also seek comment on which of the Standards' requirements take precedence and how NERC envisions ensuring compliance and consistent enforcement with regard to the Standards.

27. In a related vein, NERC indicates that proposed IRO–006–WECC–1 is more stringent than NERC Reliability Standard IRO–006 and "goes beyond the NERC Requirements by establishing a process to reduce schedules that prevent potential overloads during the next operating hour." [22] However, it is not clear to the Commission why that same benefit is not contained in the Mitigation Plan, which is referenced in the corresponding NERC Reliability Standard. The Commission seeks comment on this matter.

28. Our second concern is that, as noted above, the portion of the Mitigation Plan that the Commission relied upon in determining that the current regional Reliability Standard IRO–STD–006–0 is more stringent than the NERC Standard was contained within the procedures for steps one through three (*i.e.,* use of phase-angle regulators, series capacitors, and back-to-back DC lines to mitigate unscheduled flows before transaction curtailment), which is no longer referenced in proposed IRO–006–WECC–1. The NERC Petition states that another WECC regional Reliability Standard, TOP–STD–007–0 or TOP–007–WECC–1 (whichever is in effect), works in conjunction with IRO–006–WECC–1 to ensure these functions are performed. However, TOP–STD–007–0 requires transmission operators to ensure that power flows are maintained within Operating Transfer Capability Limits, but does not explicitly state that they must perform steps one through three of the Mitigation Plan. Similarly, without prejudging the pending proposal, it appears that TOP–007–WECC–1 generally requires entities to take action to reduce the actual flow to within SOL levels in within set time limits, but does not explicitly require action based on the specific options set forth in steps one through three of the Mitigation Plan. NERC and WECC posit that TOP–007–WECC–1 focuses on the "what" and not the "how." Nonetheless, the Commission is concerned whether WECC's reliance on TOP–STD–007–0 or TOP–007–WECC–1 (whichever is in effect) is an adequate replacement for the currently required pre-curtailment actions set forth and currently required in steps one through three of the Mitigation Plan. We request further explanation from NERC and WECC on this issue. Depending upon the response and comments, the Commission may determine it is appropriate to direct NERC and WECC to include references in IRO–006–WECC–1 to the specific actions set forth in steps one through three of the Mitigation Plan.

29. Third, as discussed above, NERC's Petition explains that the webSAS tool uses preprogrammed algorithms to calculate curtailments and, unless the reliability coordinator actively denies the request, webSAS approves the curtailment within five minutes.[23] We request additional information regarding how the webSAS program works in relation to WECC's proposed IRO–006–WECC–1, as well as NERC's currently effective IRO–006–4, which is incorporated by reference in the Mitigation Plan. For example, we ask that comments address how the webSAS program incorporates the process outlined in the Mitigation Plan. We also seek comment regarding how differences between the process detailed in the Mitigation Plan, which remains incorporated by reference in NERC's IRO–006–4, and the webSAS programming could create conflicts with respect to enforcement.

30. Fourth, the Commission is concerned about the possibility that automatic approval through the webSAS tool may occur without reliability coordinator review, as well as reliability coordinators' inability to request curtailments, and the resultant affect on reliability. Since, as the NERC Petition indicated, reliability coordinators are the only entities with the wide-area view, it is the Commission's view that it is appropriate that reliability coordinators, as the entity with the highest level of authority to ensure reliable operation of the Bulk-Power System,[24] have the ability to act to ensure reliability if necessary. For example, this is consistent with a reliability coordinator's ability to initiate relief procedures without first receiving a request from a transmission operator as established in NERC Reliability Standard IRO–001–1 [25] and IRO–006–4.[26] We request comment on these concerns.

[22] NERC Petition at 11.

[23] NERC Petition at 28–29.

[24] *See* NERC Glossary definition of "reliability coordinator."

[25] Reliability Standard IRO–001–1, Requirement R3, provides that the reliability coordinator "shall have clear decision-making authority to act and direct actions * * * to preserve the integrity and reliability of the Bulk Electric System."

[26] Reliability Standard IRO–006–4, Requirement R1 provides that a reliability coordinator

31. While we believe IRO–006–WECC–1 generally is acceptable and responsive to the directives in the June 8, 2007 Order, because of the issues noted above, we observe that maintaining both a regional difference in the national Reliability Standard and a regional Reliability Standard addressing unscheduled flows may be unnecessary and confusing. We believe it might be more efficient and appropriate to incorporate all the WECC rules and procedures with respect to unscheduled flow mitigation in a single document. Thus, the Commission requests comments regarding whether it should direct WECC to either (1) revise the Mitigation Plan referenced by IRO–006–4 to incorporate all the WECC rules and procedures, thus eliminating the need for the regional Reliability Standard; or (2) incorporate all the WECC rules and procedures into IRO–006–WECC–1 and TOP–007–WECC–1 while eliminating the regional difference contained in NERC IRO–006–4.

Summary

32. We propose to approve proposed regional Reliability Standard IRO–006–WECC–1 as just, reasonable, not unduly discriminatory or preferential, and in the public interest. We also seek comment from the ERO, WECC, and other interested entities regarding the Commission's specific concerns discussed above. The Commission may determine in the Final Rule, after considering such comments, that it is appropriate to direct WECC to develop additional modifications to IRO–006–WECC–1 and/or to update the Mitigation Plan.

IV. Information Collection Statement

33. The Office of Management and Budget (OMB) regulations require approval of certain information collection requirements imposed by agency rules.[27] Upon approval of a collection(s) of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of this proposed 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. The Paperwork Reduction Act (PRA)[28] requires each Federal agency to seek and obtain OMB approval before undertaking a collection of information directed to ten or more persons, or imposed by agency rules.[29]

34. The Commission is submitting these reporting requirements to OMB for its review and approval under section 3507(d) of the PRA. Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of provided burden estimates, 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.

35. This Notice of Proposed Rulemaking proposes to approve a new regional Reliability Standard, IRO–006–WECC–1, which will replace currently effective regional Reliability Standard IRO–STD–006–0 approved by the Commission on June 8, 2007.[30] Rather than creating entirely new requirements, the proposed regional Reliability Standard instead modifies and improves the existing regional Reliability Standard governing qualified transfer path unscheduled flow relief. Thus, this proposed rulemaking imposes a minimal additional burden on the affected entities.

36. The proposed Reliability Standard does not require responsible entities to file information with the Commission. However, it does require responsible entities to develop, provide, and maintain certain information for a specified period of time, subject to inspection by WECC. Specifically, the proposed Reliability Standard requires the reliability coordinator and balancing authorities to document and maintain information regarding actions taken in response to requests to mitigate unscheduled flow. We believe our approval of WECC regional Reliability Standard IRO–006–WECC–1 will result in a minimal increase in reporting burdens as compared to current practices in WECC.

37. Commission approval of proposed regional Reliability Standard IRO–006–WECC–1 would make the standard mandatory and enforceable. Therefore, the Commission will submit this proposed rule to OMB for review and approval of the reporting and recordkeeping requirements.

Title: FERC 725E, Mandatory Reliability Standards for the Western Electric Coordinating Council.

Action: Proposed modification to FERC–725–E.

OMB Control No.: 1902–0246.

Respondents: Balancing Authorities and Reliability Coordinator in the Western Electricity Coordinating Council (WECC).

Frequency of Responses: On occasion.

Necessity of the Information: This proposed rule would approve a revised Reliability Standard modifying the existing requirement for entities to respond to requests for curtailment. The proposed Reliability Standard requires entities to maintain documentation evidencing their response to such requests.

Internal review: The Commission has reviewed the requirements pertaining to proposed regional Reliability Standard IRO–006–WECC–1 and believes it to be just, reasonable, not unduly discriminatory or preferential, and in the public interest. These requirements conform to the Commission's plan for efficient information collection, communication and management within the energy industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

Burden Estimate: The burden for the requirements in this proposed rule follow:

Data collection FERC–725E	Number of respondents	Number of responses	Hours per response	Total annual hours
35 Balancing Authorities and 1 Reliability Coordinator-Reporting Requirement	36	1	1	36
35 Balancing Authorities and 1 Reliability Coordinator-Recordkeeping Requirement	36	1	1	36
Total				72

experiencing a potential or actual system operating limit or interconnection reliability operator limit "shall, with its authority and at its discretion, select one or more procedures to provide transmission loading relief."

[27] 5 CFR 1320.11.

[28] 44 U.S.C. 3501–20.

[29] 44 U.S.C. 3502(3)(A)(i), 44 U.S.C. 3507(a)(3), 5 CFR 1320.11. The FERC–725E reporting requirements originally were approved by OMB on 10/10/2007.

[30] *North American Electric Reliability Corp.,* 119 FERC ¶ 61,260.

38. Total Annual hours for Collection: 36 reporting + 36 recordkeeping = 72 hours.

Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. It has projected the average annualized cost to be $5,760, as shown below:

Reporting = 36 hours @ $120/hour = $4,320

Recordkeeping = 36 hours @ $40/hour = $1,440

Total Costs = Reporting ($4,320) + Recordkeeping ($1,440) = $5,760

39. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director, Phone: (202) 502–8663, fax: (202) 273–0873, e-mail: *DataClearance@ferc.gov*]. Comments on the requirements of the proposed rule may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission]. For security reasons, comments should be sent by e-mail to OMB at: *oira_submission@omb.eop.gov*. Please reference OMB Control Number 1902–0246 and the docket number of this proposed rulemaking in your submission.

V. Environmental Analysis

40. 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.[31] The actions proposed here fall within the categorical exclusion in the Commission's regulations for rules that are clarifying, corrective or procedural, for information gathering, analysis, and dissemination.[32] Accordingly, neither an environmental impact statement nor environmental assessment is required.

VI. Regulatory Flexibility Act Analysis

41. The Regulatory Flexibility Act of 1980 (RFA)[33] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. Most of the entities (*i.e.,* reliability coordinators and balancing authorities) to which the requirements of this Rule would apply do not fall within the definition of small entities.[34] The Commission estimates that only 2–4 of the 35 balancing authorities (or a maximum of 11.4%) are small. The proposed Reliability Standard reflects a modification of existing requirements. Based on the foregoing, the Commission certifies that this Rule will not have a significant impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis is required.

VII. Comment Procedures

42. 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 December 28, 2010. Comments must refer to Docket No. RM09–19–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

43. 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.

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

45. 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

46. 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 FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

47. From FERC'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.

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

By direction of the Commission.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–27408 Filed 10–28–10; 8:45 am]

BILLING CODE 6717–01–P

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

[32] 18 CFR 380.4(a)(5).

[33] 5 U.S.C. 601–12.

[34] 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. According to the SBA, a small electric utility is defined as one that has a total electric output of less than four million MWh in the preceding year.

DEPARTMENT OF EDUCATION

34 CFR Part 668

[Docket ID ED–2010–OPE–0012]

RIN 1840–AD04

Program Integrity: Gainful Employment; Correction

AGENCY: Office of Postsecondary Education, Department of Education

ACTION: Notice of public meeting sessions; correction.

SUMMARY: On October 18, 2010, we published in the **Federal Register** (75 FR 63763) a notice announcing public meeting sessions to receive oral presentations and to interact with commenters regarding comments that were submitted to the Department of Education in response to its Notice of Proposed Rulemaking on Program Integrity: Gainful Employment, published in the **Federal Register** on July 26, 2010 (75 FR 43616).

This document corrects the ending date for members of the public to register to attend—only—the public meeting sessions that is listed in the October 18, 2010 notice.

FOR FURTHER INFORMATION CONTACT: Leigh Arsenault, U.S. Department of

Education, 400 Maryland Avenue, SW., room 7E304, Washington, DC 20202. *Telephone:* 202–453–7127 or by *e-mail: Leigh.Arsenault@ed.gov.*

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

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

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Correction

In proposed rule FR Doc. 10–26180, beginning on page 67363 in the issue of October 18, 2010, make the following correction, in the **SUPPLEMENTARY INFORMATION** section. On page 63764, in the second column, in the eighth and ninth lines, correct the date to read "October 29, 2010".

Dated: October 26, 2010.

Arne Duncan,

Secretary of Education.

[FR Doc. 2010–27415 Filed 10–28–10; 8:45 am]

BILLING CODE 4000–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, 13, 80, and 87

[WT Docket No. 10–177; FCC 10–154]

Commercial Radio Operators Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend our rules concerning commercial radio operator licenses for maritime and aviation radio stations who perform certain functions performed within the commercial radio operators service, to determine which rules can be clarified, streamlined, or eliminated.

DATES: Submit comments on or before November 29, 2010 and reply comments are due December 13, 2010.

ADDRESSES: You may submit comments, identified by WT Docket No. 10–177; FCC 10–154, 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://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, *etc.*) by e-mail: *FCC504@fcc.gov* or phone 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Stana Kimball, Mobility Division, Wireless Telecommunications Bureau, (202) 418–1306, TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking* (NPRM), WT Docket No. 10–177, FCC 10–154, adopted August 31, 2010, and released September 8, 2010. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Room CY–A257, Washington, DC 20554, or by downloading the text from the Commission's Web site at *http://www.fcc.gov/Daily_Releases/Daily_Digest/2010/dd100909.html.* The complete text also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, Suite CY–B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an e-mail to *FCC504@fcc.gov* or calling the Consumer and Government Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

1. The Commission initiated this proceeding to amend the Commercial Radio Operators rules, and related rules in parts 0, 1, 80, and 87 regarding certain functions performed by licensed commercial radio operators (COLEMs). Specifically, the Commission proposed in the *NPRM* to amend the commercial radio operator rules to: (1) Cease granting new First and Third Class Radiotelegraph Operator's Certificates, and seek comment on extending the current five-year license for radiotelegraph operator certificates to ten years or the lifetime of the holder; (2) eliminate prohibitions against holding two licenses at the same time, and restrictive endorsements; and (3) make the COLEMs responsible for maintaining the question pools for commercial radio operator examinations, stop requiring them to submit examination-related records on a regular basis, and make additional administrative changes relating to the examinations such as recordkeeping, electronic filing, and submission of records to the Commission. In the *NPRM,* the Commission also seeks comment on whether and how to harmonize the part 80 equipment testing and logging requirements, and proposes other administrative and editorial amendments.

I. Procedural Matters

A. Ex Parte Rules—Permit-but-Disclose Proceeding

2. This is a permit-but-disclose notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules.

B. Comment Dates

3. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before November 29, 2010, and reply comments are due December 13, 2010.

4. Commenters may file comments electronically using the Commission's Electronic Comment Filing System (ECFS), the Federal Government's eRulemaking Portal, or by filing paper copies. Commenters filing through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* If multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Commenters may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, "get form."

Commenters will receive a sample form and directions in reply. Commenters filing through the Federal eRulemaking Portal *http://www.regulations.gov*, should follow the instructions provided on the Web site for submitting comments.

5. Commenters who chose to file paper comments must file an original and four copies of each comment. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554.

6. 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, Office of the Secretary, Federal Communications Commission, as follows: All hand-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Envelopes must be disposed of before entering the building. The filing hours at this location are 8 a.m. to 7 p.m. 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 mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

C. Paperwork Reduction Act

7. This document contains proposed modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the "information collection burden for small business concerns with fewer than 25 employees."

II. Initial Regulatory Flexibility Analysis

8. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the *NPRM* in this proceeding. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments as provided in paragraph 28 in the *NPRM.* The Commission will send a copy of the *NPRM,* including the IRFA, to the Chief Counsel for Advocacy of the U.S. Small Business Administration. In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register.**

Need for, and Objectives of, the Proposed Rules

3. We believe it appropriate to review our regulations in relating commercial radio operators to determine which rules can be clarified, streamlined or eliminated. In the *NPRM,* we seek comment on miscellaneous amendments that are intended to clarify part 13 rules, including the elimination of rules that refer to outdated services, equipment, and technology. In addition, the *NPRM* seeks comment on proposed editorial changes to rules contained in parts 0, 1, 80, and 87 that relate to commercial radio operator services. We also solicit comment on any other changes, corrections, or clarifications of the rules governing commercial radio operators that commenters believe are needed.

Legal Basis for Proposed Rules

4. The proposed action is authorized under sections 4(i), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 403.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

5. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted. The RFA generally defines the term "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).

6. Commercial radio licenses are issued only to individuals. Individuals are not "small entities" under the RFA.

7. Individual licensees are tested by commercial operator license examination managers (COLEMs). The Commission has not developed a definition for a small business or small organization that is applicable for COLEMs. The RFA defines the term "small organization" as meaning "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field * * *." All of the COLEM organizations would appear to meet the RFA definition for small organizations.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

8. There are no projected reporting, recordkeeping or other compliance requirements.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

9. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

10. We believe the changes proposed in the NPRM will promote flexibility and more efficient use of the spectrum, without creating administrative burdens on the Commission, COLEMs, or individual licensees. Many of the proposed changes constitute clarification of existing requirements or elimination of reporting requirements and other rules that are outdated. In this NPRM, we seek comment on our proposals to modify the rules. Among others, we seek comment on our proposal to require COLEMs to maintain the pool of questions for commercial radio operator license examinations. We believe that this would reduce administrative burden on the Commission and speed up the question pool revision process, without overly

burdening COLEMs which already cooperate in creating new question pools. To codify the current business practice of the majority of COLEMs, we seek comment on our proposal to require COLEMs to file applications on behalf of individual applicants electronically. We believe that this too would reduce administrative burden on the Commission, without burdening COLEMs.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

11. None.

III. Ordering Clauses

12. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of the *NPRM,* including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 0

Organization and functions (Government agencies).

47 CFR Part 1

Administrative practice and procedure, Communications common carriers, Telecommunications.

47 CFR Parts 13 and 80

Communications equipment, Radio.

47 CFR Part 87

Air transportation, Communications equipment, Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 0, 1, 13, 80, and 87 as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

2. Section 0.483 is amended by revising paragraph (b) to read as follows:

§ 0.483 Applications for amateur or commercial radio operator licenses.

* * * * *

(b) Application filing procedures for commercial radio operator licenses are set forth in part 13 of this chapter.

§ 0.489 [Removed]

3. Remove § 0.489.

PART 1—PRACTICE AND PROCEDURE

4. 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, 303(r), and 309.

5. Section 1.85 is revised to read as follows:

§ 1.85 Suspension of operator licenses.

Whenever grounds exist for suspension of an operator license, as provided in section 303(m) of the Communications Act, the Chief of the Wireless Telecommunications Bureau, with respect to amateur and commercial radio operator licenses, may issue an order suspending the operator license. No order of suspension of any operator's license shall take effect until 15 days' notice in writing of the cause for the proposed suspension has been given to the operator licensee, who may make written application to the Commission at any time within the said 15 days for a hearing upon such order. The notice to the operator licensee shall not be effective until actually received by him, and from that time he shall have 15 days in which to mail the said application. In the event that physical conditions prevent mailing of the application before the expiration of the 15-day period, the application shall then be mailed as soon as possible thereafter, accompanied by a satisfactory explanation of the delay. Upon receipt by the Commission of such application for hearing, said order of suspension shall be designated for hearing by the Chief, Wireless Telecommunications Bureau and said suspension shall be held in abeyance until the conclusion of the hearing. Upon the conclusion of said hearing, the Commission may affirm, modify, or revoke said order of suspension. If the license is ordered suspended, the operator shall send his operator license to the Mobility Division, Wireless Telecommunications Bureau, in Washington, DC, on or before the effective date of the order, or, if the effective date has passed at the time notice is received, the license shall be sent to the Commission forthwith.

PART 13—COMMERCIAL RADIO OPERATORS

6. The authority citation for part 13 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082 as amended; 47 U.S.C. 154, 303.

7. Section 13.7 is amended by revising paragraphs (b)(1) through (b)(3), and paragraph (c) to read as follows:

§ 13.7 Classification of operator licenses and endorsements.

* * * * *

(b) * * *

(1) First Class Radiotelegraph Operator's Certificate. Beginning [date reserved], no applications for new First Class Radiotelegraph Operator's Certificates will be accepted for filing.

(2) Radiotelegraph Operator's Certificate (formerly Second Class Radiotelegraph Operator's Certificate).

(3) Third Class Radiotelegraph Operator's Certificate (radiotelegraph operator's special certificate). Beginning [date reserved], no applications for new Third Class Radiotelegraph Operator's Certificates will be accepted for filing.

* * * * *

(c) There are three license endorsements affixed by the FCC to provide special authorizations or restrictions. Endorsements may be affixed to the license(s) indicated in parentheses.

(1) Ship Radar Endorsement (Radiotelegraph Operator Certificate, First and Second Class Radiotelegraph Operator's Certificates, General Radiotelephone Operator License, GMDSS Radio Maintainer's License).

(2) Six Months Service Endorsement (Radiotelegraph Operator Certificate, First and Second Class Radiotelegraph Operator's Certificates).

(3) Restrictive endorsements relating to physical disability, English language or literacy waivers, or other matters (all licenses).

* * * * *

8. Section 13.8 is amended by revising paragraphs (a) and (b) to read as follows:

§ 13.8 Authority conveyed.

* * * * *

(a) First Class Radiotelegraph Operator's Certificate conveys all of the operating authority of the Radiotelegraph Operator's Certificate, the Second Class Radiotelegraph Operator's Certificate, the Third Class Radiotelegraph Operator's Certificate, the Restricted Radiotelephone Operator Permit, and the Marine Radio Operator Permit.

(b) Radiotelegraph Operator's Certificate is equivalent to Second Class Radiotelegraph Operator's Certificate. Second Class Radiotelegraph Operator's Certificate conveys all of the operating authority of the Third Class Radiotelegraph Operator's Certificate, the Restricted Radiotelephone Operator

Permit, and the Marine Radio Operator Permit.

* * * * *

9. Section 13.9 is amended by revising paragraphs (b), (c), and (f)(4) to read as follows:

§ 13.9 Eligibility and application for new license or endorsement.

* * * * *

(b) Each application for a new General Radiotelephone Operator License, Marine Radio Operator Permit, Radiotelegraph Operator's Certificate, Ship Radar Endorsement, Six Months Service Endorsement, GMDSS Radio Operator's License, Restricted GMDSS Radio Operator's License, GMDSS Radio Maintainer's License, GMDSS Radio Operator/Maintainer License, Restricted Radiotelephone Operator Permit, or Restricted Radiotelephone Operator Permit-Limited Use must be filed on FCC Form 605 in accordance with § 1.913 of this chapter.

(c) Each application for a new General Radiotelephone Operator License, Marine Radio Operator Permit, Radiotelegraph Operator's Certificate, Ship Radar Endorsement, GMDSS Radio Operator's License, Restricted GMDSS Radio Operator's License, GMDSS Radio Maintainer's License, or GMDSS Radio Operator/Maintainer License must be accompanied by the required fee, if any, and submitted in accordance with § 1.913 of this chapter. The application must include an original PPC(s) from a COLEM(s) showing that the applicant has passed the necessary examination element(s) within the previous 365 days when the applicant files the application. If a COLEM files the application electronically on behalf of the applicant, an original PPC(s) is not required. However, the COLEM must keep the PPC(s) on file for a period of 1 year.

* * * * *

(f) * * *

(4) The applicant held a FCC-issued Radiotelegraph Operator's Certificate, First Class Radiotelegraph Operator's Certificate, or Second Class Radiotelegraph Operator's Certificate during this entire six month qualifying period; and

* * * * *

10. Section 13.10 is revised to read as follows:

§ 13.10 Licensee address.

In accordance with § 1.923 of this chapter all applicants (except applicants for a Restricted Radiotelephone Operator Permit and applicants for a Restricted Radiotelephone Operator Permit—Limited Use) must specify an address where the applicant can receive mail delivery by the United States Postal Service. Suspension of the operator license or permit may result when correspondence from the FCC is returned as undeliverable because the applicant failed to provide the correct mailing address.

11. Section 13.11 is revised to read as follows:

§ 13.11 Holding more than one commercial radio operator license.

Each person who is not legally eligible for employment in the United States, and certain other persons who were issued permits prior to September 13, 1982, may hold two Restricted Radiotelephone Operator Permits simultaneously when each permit authorizes the operation of a particular station or class of stations.

12. Section 13.13 is amended by revising paragraphs (a), (b), and (d) to read as follows:

§ 13.13 Application for a renewed or modified license.

(a) Each application to renew a Radiotelegraph Operator's Certificate, First Class Radiotelegraph Operator's Certificate, Second Class Radiotelegraph Operator's Certificate, or Third Class Radiotelegraph Operator's Certificate must be made on FCC Form 605. The application must be accompanied by the appropriate fee and submitted in accordance with § 1.913 of this chapter. (Beginning [date reserved]; First and Second Class Radiotelegraph Operator's Certificates will be renewed as Radiotelegraph Operator's Certificates.)

(b) If a license expires, application for renewal may be made during a grace period of five years after the expiration date without having to retake the required examinations. The application must be accompanied by the required fee and submitted in accordance with § 1.913 of this chapter. During the grace period, the expired license is not valid. A license renewed during the grace period will be effective as of the date of the renewal. Licensees who fail to renew their licenses within the grace period must apply for a new license and take the required examination(s). (Beginning [date reserved]; no applications for new First Class Radiotelegraph Operator's Certificates or Third Class Radiotelegraph Operator's Certificates will be accepted for filing.)

* * * * *

(d) Provided that a person's commercial radio operator license was not revoked, or suspended, and is not the subject of an ongoing suspension proceeding, a person holding a General Radiotelephone Operator License, Marine Radio Operator Permit, Radiotelegraph Operator's Certificate, First Class Radiotelegraph Operator's Certificate, Second Class Radiotelegraph Operator's Certificate, Third Class Radiotelegraph Operator's Certificate, GMDSS Radio Operator's License, GMDSS Radio Maintainer's License, or GMDSS Radio Operator/Maintainer License, who has an application for another commercial radio operator license which has not yet been acted upon pending at the FCC and who holds a PPC(s) indicating that he or she passed the necessary examination(s) within the previous 365 days, is authorized to exercise the rights and privileges of the license for which the application is filed. This temporary conditional operating authority is valid for a period of 90 days from the date the application is received. This temporary conditional operating authority does not relieve the licensee of the obligation to comply with the certification requirements of the Standards of Training, Certification and Watchkeeping (STCW) Convention. The FCC, in its discretion, may cancel this temporary conditional operating authority without a hearing.

* * * * *

13. Section 13.15 is amended by revising paragraph (a) to read as follows:

§ 13.15 License term.

(a) Radiotelegraph Operator's Certificates, First Class Radiotelegraph Operator's Certificates, Second Class Radiotelegraph Operator's Certificates, and Third Class Radiotelegraph Operator's Certificates are normally valid for a term of five years from the date of issuance.

* * * * *

14. Section 13.17 is amended by revising paragraphs (b) and (c), and by removing paragraph (d) and redesignating paragraph (e) as paragraph (d) to read as follows:

§ 13.17 Replacement license.

* * * * *

(b) Each application for a replacement General Radiotelephone Operator License, Marine Radio Operator Permit, Radiotelegraph Operator Certificate, First Class Radiotelegraph Operator's Certificate, Second Class Radiotelegraph Operator's Certificate, Third Class Radiotelegraph Operator's Certificate, GMDSS Radio Operator's License, Restricted GMDSS Radio Operator's License, GMDSS Radio Maintainer's License, or GMDSS Radio Operator/Maintainer License must be made on FCC Form 605 and must include a written explanation as to the circumstances involved in the loss, mutilation, or destruction of the original document.

(c) Each application for a replacement Restricted Radiotelephone Operator Permit or Restricted Radiotelephone Operator Permit-Limited Use must be on FCC Form 605.

* * * * *

15. Section 13.201 is amended by revising paragraphs (b) (1) through (b)(7) to read as follows:

§ 13.201 Qualifying for a commercial operator license or endorsement.

* * * * *

(b) * * *

(1) Radiotelegraph Operator's Certificate.

(i) Telegraphy Elements 1 and 2;

(ii) Written Elements 1, 5, and 6.

(2) General Radiotelephone Operator License: Written Elements 1 and 3.

(3) Marine Radio Operator Permit: Written Element 1.

(4) GMDSS Radio Operator's License: Written Elements 1 and 7, or a Proof of Passing Certificate (PPC) issued by the United States Coast Guard or its designee representing a certificate of competency from a Coast Guard-approved training course for a GMDSS endorsement.

(5) Restricted GMDSS Radio Operator License: Written Elements 1 and 7R, or a Proof of Passing Certificate (PPC) issued by the United States Coast Guard or its designee representing a certificate of competency from a Coast Guard-approved training course for a GMDSS endorsement.

(6) GMDSS Radio Maintainer's License: Written Elements 1, 3, and 9.

(7) Ship Radar Endorsement: Written Element 8.

* * * * *

16. Section 13.203 is amended by revising paragraphs (a)(1) and (a)(2), and by removing paragraphs (b)(3) and (b)(4) to read as follows:

§ 13.203 Examination elements.

(a) * * *

(1) Element 1: Basic radio law and operating practice with which every maritime radio operator should be familiar. Questions concerning provisions of laws, treaties, regulations, and operating procedures and practices generally followed or required in communicating by means of radiotelephone stations.

(2) Element 3: General radiotelephone. Questions concerning electronic fundamentals and techniques required to adjust, repair, and maintain radio transmitters and receivers at stations licensed by the FCC in the aviation and maritime radio services.

* * * * *

17. Section 13.209 is amended by revising paragraph (d), removing paragraph (e), redesignating paragraphs (f) through (j) as paragraphs (e) through (i), and by revising newly redesignated paragraph (h) to read as follows:

§ 13.209 Examination procedures.

* * * * *

(d) *Passing a telegraphy examination.* Passing a telegraphy receiving examination is adequate proof of an examinee's ability to both send and receive telegraphy. The COLEM, however, may also include a sending segment in a telegraphy examination.

(1) To pass a receiving telegraphy examination, an examinee is required to receive correctly the message by ear, for a period of 1 minute without error at the rate of speed specified in § 13.203(b).

(2) To pass a sending telegraphy examination, an examinee is required to send correctly for a period of one minute at the rate of speed specified in § 13.203(b).

* * * * *

(h) No applicant who is eligible to apply for any commercial radio operator license shall, by reason of any physical disability, be denied the privilege of applying and being permitted to attempt to prove his or her qualifications (by examination if examination is required) for such commercial radio operator license in accordance with procedures established by the COLEM.

* * * * *

18. Section 13.211 is amended by revising paragraph (e) to read as follows:

§ 13.211 Commercial radio operator license examination.

* * * * *

(e) Within 3 business days of completion of the examination element(s), the COLEM must provide the results of the examination to the examinee and the COLEM must issue a PPC to an examinee who scores a passing grade on an examination element.

* * * * *

19. Section 13.213 is amended by adding paragraph (g) to read as follows:

§ 13.213 COLEM qualifications.

* * * * *

(g) Submit applications that it files on behalf of applicants electronically via the Commission's Universal Licensing System.

20. Section 13.215 is revised to read as follows:

§ 13.215 Question pools.

All COLEMs must cooperate in maintaining one question pool for each written examination element. Each question pool must contain at least 5 times the number of questions required for a single examination. Each question pool must be published and made available to the public prior to its use for making a question set.

PART 80—STATIONS IN THE MARITIME SERVICES

21. The authority citation for part 80 continues to read as follows:

Authority: Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

22. Section 80.59 is amended by revising the note and the table in paragraph (a)(1) and paragraph (b) to read as follows:

§ 80.59 Compulsory ship inspections.

(a) * * *

(1) * * *

Note to paragraph (a)(1): Nothing in this section prohibits Commission inspectors from inspecting ships. The mandatory inspection of U.S. vessels must be conducted by an FCC-licensed technician holding an FCC General Radiotelephone Operator License, GMDSS Radio Maintainer's License, Radiotelegraph Operator's Certificate, Second Class Radiotelegraph Operator's Certificate, or First Class Radiotelegraph Operator's Certificate in accordance with the following table:

Category of vessel	Minimum class of FCC license required by private sector technician to conduct inspection—only one license required			
	General radiotelephone operator license	GMDSS radio maintainer's license	Radiotelegraph operator's certificate (formerly second class radiotelegraph operator's certificate)	First class radiotelegraph operator's certificate
Radiotelephone equipped vessels subject to 47 CFR part 80, subpart R or S	√	√	√	√
GMDSS equipped vessels subject to 47 CFR part 80, subpart W		√		

* * * * *

(b) Inspection and certification of a ship subject to the Great Lakes Agreement. The FCC will not inspect Great Lakes Agreement vessels. An inspection and certification of a ship subject to the Great Lakes Agreement must be made by a technician holding one of the following: an FCC General Radiotelephone Operator License, a GMDSS Radio Maintainer's License, a Radiotelegraph Operator's Certificate, a Second Class Radiotelegraph Operator's Certificate, or a First Class Radiotelegraph Operator's Certificate. The certification required by § 80.953 must be entered into the ship's log. The technician conducting the inspection and providing the certification must not be the vessel's owner, operator, master, or an employee of any of them. Additionally, the vessel owner, operator, or ship's master must certify that the inspection was satisfactory. There are no FCC prior notice requirements for any inspection pursuant to § 80.59(b).

* * * * *

23. Section 80.151 is amended by adding paragraphs (b)(9) through (b)(11) and by revising paragraphs (c)(1) through (c)(3) to read as follows:

§ 80.151 Classification of operator licenses and endorsements.

* * * * *

(b) * * *

(9) T–3. Third Class Radiotelegraph Operator's Certificate (radiotelegraph operator's special certificate). Beginning [date reserved], no applications for new Third Class Radiotelegraph Operator's Certificates will be accepted for filing.

(10) T. Radiotelegraph Operator's Certificate (formerly T–2, Second Class Radiotelegraph Operator's Certificate).

(11) T–1. First Class Radiotelegraph Operator's Certificate. Beginning [date reserved], no applications for new First Class Radiotelegraph Operator's Certificates will be accepted for filing.

(c) * * *

(1) Ship Radar endorsement (Radiotelegraph Operator's Certificate, First Class Radiotelegraph Operator's Certificate, Second Class Radiotelegraph Operator's Certificate, General Radiotelephone Operator License).

(2) Six Months Service endorsement (Radiotelegraph Operator's Certificate, First Class Radiotelegraph Operator's Certificate, and Second Class Radiotelegraph Operator's Certificate).

(3) Restrictive endorsements; relating to physical disabilities, English language or literacy waivers, or other matters (all licenses).

24. Section 80.157 is revised to read as follows:

§ 80.157 Radio officer defined.

A *radio officer* means a person holding a Radiotelegraph Operator's Certificate, First Class Radiotelegraph Operator's Certificate, or Second Class Radiotelegraph Operator's Certificate issued by the Commission, who is employed to operate a ship radio station in compliance with Part II of Title II of the Communications Act. Such a person is also required to be licensed as a *radio officer* by the U.S. Coast Guard when employed to operate a ship radiotelegraph station.

25. Section 80.159 is amended by revising paragraphs (a) and (b) to read as follows:

§ 80.159 Operator requirements of Title III of the Communications Act and the Safety Convention.

(a) Each telegraphy passenger ship equipped with a radiotelegraph station in accordance with Part II of Title III of the Communications Act must carry two radio officers holding a Radiotelegraph Operator's Certificate, First Class Radiotelegraph Operator's Certificate, or Second Class Radiotelegraph Operator's Certificate.

(b) Each cargo ship equipped with a radiotelegraph station in accordance with Part II of Title II of the Communications Act and which has a radiotelegraph auto alarm must carry a radio officer holding a Radiotelegraph Operator's Certificate, First Class Radiotelegraph Operator's Certificate, or Second Class Radiotelegraph Operator's Certificate who has had at least six months service as a radio officer on board U.S. ships. If the radiotelegraph station does not have an auto alarm, a second radio officer who holds a Radiotelegraph Operator's Certificate, First Class Radiotelegraph Operator's Certificate, or Second Class Radiotelegraph Operator's Certificate must be carried.

* * * * *

26. Section 80.169 is amended by revising paragraphs (a) and (b) to read as follows:

§ 80.169 Operators required to adjust transmitters or radar.

(a) All adjustments of radio transmitters in any radiotelephone station or coincident with the installation, servicing, or maintenance of such equipment which may affect the proper operation of the station, must be performed by or under the immediate supervision and responsibility of a person holding a Radiotelegraph Operator's Certificate, First Class Radiotelegraph Operator's Certificate, Second Class Radiotelegraph Operator's Certificate, or General Radiotelephone Operator License.

(b) Only persons holding a Radiotelegraph Operator's Certificate, First Class Radiotelegraph Operator's Certificate, or Second Class Radiotelegraph Operator's Certificate must perform such functions at radiotelegraph stations transmitting Morse code.

* * * * *

27. Section 80.203 is amended by revising paragraph (b)(3) introductory text to read as follows:

§ 80.203 Authorization of transmitters for licensing.

* * * * *

(b) * * *

(3) Except as provided in paragraph (b)(4) of this section, programming of authorized channels must be performed only by a person holding a Radiotelegraph Operator's Certificate,

First Class Radiotelegraph Operator's Certificate, Second Class Radiotelegraph Operator's Certificate, or General Radiotelephone Operator License using any of the following procedures:

* * * * *

28. Section 80.409 is amended by revising paragraph (f)(1)(i)(E) to read as follows:

§ 80.409 Station logs.

* * * * *

(f) * * *

(1) * * *

(i) * * *

(E) The inspector's signed and dated certification that the vessel meets the requirements of the Communications Act and, if applicable, the Safety Convention and the Bridge-to-Bridge Act contained in subparts R, S, U, or W of this part and has successfully passed the inspection.

* * * * *

29. Section 80.953 is amended by revising paragraph (b) introductory text to read as follows:

§ 80.953 Inspection and certification.

* * * * *

(b) An inspection and certification of a ship subject to the Great Lakes Agreement must be made by a technician holding one of the following: A General Radiotelephone Operator License, a GMDSS Radio Maintainer's License, a Radiotelegraph Operator's Certificate, a Second Class Radiotelegraph Operator's Certificate, or a First Class Radiotelegraph Operator's Certificate. Additionally, the technician must not be the vessel's owner, operator, master, or an employee of any of them. The results of the inspection must be recorded in the ship's radiotelephone log and include:

* * * * *

30. Section 80.1005 is revised to read as follows:

§ 80.1005 Inspection of station.

The bridge-to-bridge radiotelephone station will be inspected on vessels subject to regular inspections pursuant to the requirements of Parts II and III of Title II of the Communications Act, the Safety Convention or the Great Lakes Agreement at the time of the regular inspection. If after such inspection, the Commission determines that the Bridge-to-Bridge Act, the rules of the Commission and the station license are met, an endorsement will be made on the appropriate document. The validity of the endorsement will run concurrently with the period of the regular inspection. Each vessel must carry a certificate with a valid endorsement while subject to the Bridge-to-Bridge Act. All other bridge-to-bridge stations will be inspected from time to time. An inspection of the bridge-to-bridge station on a Great Lakes Agreement vessel must normally be made at the same time as the Great Lakes Agreement inspection is conducted by a technician holding one of the following: A General Radiotelephone Operator License, a GMDSS Radio Maintainer's License, a Radiotelegraph Operator's Certificate, a Second Class Radiotelegraph Operator's Certificate, or a First Class Radiotelegraph Operator's Certificate. Additionally, the technician must not be the owner, operator, master, or an employee of any of them. Ships subject to the Bridge-to-Bridge Act may, in lieu of an endorsed certificate, certify compliance in the station log required by § 80.409(f).

PART 87—AVIATION SERVICES

31. The authority citation for part 87 continues to read as follows:

Authority: 47 U.S.C. 154, 303 and 307(e), unless otherwise noted.

32. Section 87.87 is amended by revising paragraphs (b)(1), (b)(2), and (b)(4) to read as follows:

§ 87.87 Classification of operator licenses and endorsements.

* * * * *

(b) * * *

(1) T–1 First Class Radiotelegraph Operator's Certificate. Starting thirty days after the date of publication in the **Federal Register** of a Report and Order in WT Docket No. 10–177, adopting this rule, no applications for new First Class Radiotelegraph Operator's Certificates will be accepted for filing.

(2) T Radiotelegraph Operator's Certificate (formerly T–2 Second Class Radiotelegraph Operator's Certificate).

* * * * *

(4) T–3 Third Class Radiotelegraph Operator's Certificate (radiotelegraph operator's special certificate). Starting thirty days after the date of publication in the **Federal Register** of a Report and Order in WT Docket No. 10–177, adopting this rule, no applications for new Third Class Radiotelegraph Operator's Certificates will be accepted for filing.

* * * * *

[FR Doc. 2010–26263 Filed 10–28–10; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 75, No. 209
Friday, October 29, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

October 26, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Risk Management Agency

Title: General Administrative Regulations; Subpart V—Submission of Policies, Provisions of Policies and Rates of Premium.

OMB Control Number: 0563–0064.

Summary of Collections: The Federal Crop Insurance Corporation (FCIC) amends the procedures for the submission of policies, plans of insurance, or other rates or premium by insurance companies, entities or other persons. Public Law 96–365 provided for nationwide expansion of a comprehensive crop insurance program. The Federal Crop Insurance Act, as amended, expanded the role of the crop insurance to be the principal tool for risk management by producers of farm products and required that the crop insurance program operate on an actuarially sound basis. It provides for independent reviews of insurance products by persons experienced as actuaries and in underwriting. The Act was further amended in 2008 to provide the opportunity for the submission of a concept proposal to the FCIC Board of Directors (Board) for approval for advance payment of estimated research and development expenses.

Need and Use of the Information: An applicant has the option to submit a concept proposal or a submission package for a crop insurance product and have it presented to the Board. The Board will review an applicant's submissions to determine, if the interests of agricultural producers and taxpayers are protected; the submission is actuarially appropriate; appropriate insurance principles are followed; the requirements of the Act are met; and that sound, reasonable and appropriate underwriting principals are followed. If the information is incomplete, the submission will be disapproved.

Description of Respondents: Business or other-for-profit.

Number of Respondents: 556.

Frequency of Responses: Recordkeeping: Reporting; Other.

Total Burden Hours: 122,648.

Risk Management Agency

Title: Community Outreach and Assistance Partnership Program.

OMB Control Number: 0563–0066.

Summary of Collection: The Federal Crop Insurance Act of 2002 authorizes the Federal Crop Insurance Corporation (FCIC) to enter into partnerships with public and private entities for the purpose of increasing the availability of risk management tools for producers of agricultural commodities. The Risk Management Agency has developed procedures for the preparation, submission and evaluation of applications for partnership agreements that will be used to provide outreach and assistance to underserved producers, farmers, ranchers and women, limited resource, socially disadvantaged.

Need and Use of the Information: Applicants are required to submit materials and information necessary to evaluate and rate the merit of proposed projects and evaluate the capacity and qualification of the organization to complete the project. The application package should include: A project summary and narrative, a statement of work, a budget narrative and OMB grant forms. RMA and review panel will evaluate and rank applicants as well as use the information to properly document and protect the integrity of the process used to select applications for funding.

Description of Respondents: Not-for-profit institutions; Business or other for-profit; State, Local, or Tribal Government.

Number of Respondents: 120.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,280.

Risk Management Agency

Title: Risk Management and Crop Insurance Education; Activity Log.

OMB Control Number: 0563–0070.

Summary of Collection: The Federal Crop Insurance Act, Title 7 U.S.C. Chapter 36 Section 1508(k) authorizes the Federal Crop Insurance Corporation (FCIC) to establish crop insurance education and information programs in States that have been historically underserved by Federal Crop insurance program (7 U.S.C. 1524(a)(2)) and provide agricultural producers with training opportunities in risk management. The Risk Management Agency (RMA) refers to these three programs as the Community Outreach and Assistance Partnership, Targeted States and Small Sessions programs available to carry out certain risk

management education provisions of the Federal Crop Insurance Act.

Need and Use of the Information: RMA will use Form RMA–300, Activity Log, to collect information to monitor certain educational activities. Agreement holders are required to record specific information about each educational activity conducted under the agreement in an Activity Log and submit as part of the required quarterly progress report. In addition, RMA will use information provided by agreement holders to ensure that funded educational projects are progressing.

Description of Respondents: Not-for-profit institutions; Business or other for-profit; State, Local, or Tribal Government.

Number of Respondents: 167.

Frequency of Responses: Reporting: Quarterly.

Total Burden Hours: 736.

Charlene Parker,

Departmental Information Clearance Officer.

[FR Doc. 2010–27376 Filed 10–28–10; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

October 26, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques and other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Federal and Non-Federal Financial Assistance Instruments.

OMB Control Number: 0596–0217.

Summary of Collection: In order to carry out specific Forest Service (FS) activities, Congress created several authorities to assist the Agency in carrying out its mission. Authorized by the Federal Grants and Cooperative Agreements Act, the FS issues Federal Financial Assistance awards, (*i.e.,* grants and cooperative agreements). Agency specific authorities and appropriations also support use of Federal Financial Assistance awards. Information is collected from individuals; non-profit and for-profit institutions; institutions of higher education and State, local, and Native American Tribal governments *etc.* Multiple options are available for respondents to respond including forms, non-forms, electronically, face-to-face, by telephone and over the Internet.

Need and Use of the Information: From the pre-award to the close-out stage, FS will collect information from respondents on forms, via e-mails, meetings, and telephone calls. Using various forms respondents will describe the type of project, project scope, financial plan and other factors. Without this information the FS would not be able to develop, implement, monitor and administer these agreements.

Description of Respondents: Business or other for-profit; Not-for-profit Institutions; State, Local or Tribal Government.

Number of Respondents: 13,014.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 39,352.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–27394 Filed 10–28–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by December 28, 2010.

FOR FURTHER INFORMATION CONTACT: Michele L. Brooks, Director, Program Development and Regulatory Analysis, USDA Rural Development, 1400 Independence Ave., SW., STOP 1522, Room 5162 South Building, Washington, DC 20250–1522. Telephone: (202) 690–1078. FAX: (202) 720–8435.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for extension.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Michele L. Brooks, Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1522, Room 5162 South Building, Washington, DC 20250–1522.

Telephone: (202) 690–1078, FAX: (202) 720–8435.

Title: 7 CFR Part 1744, Subpart B, "Lien Accommodations and Subordination Policy."

OMB Control Number: 0572–0126.

Type of Request: Extension of a currently approved information collection.

Abstract: Recent changes in the telecommunications industry, including deregulation and technological developments, have caused RUS borrowers and other organizations providing telecommunications services in rural areas to consider undertaking projects that provide new telecommunications services and other telecommunications services not ordinarily financed by RUS. To facilitate the financing of those projects and services, this program helps to facilitate funding from non-RUS sources in order to meet the growing capital needs of rural Local Exchange Carriers (LECs).

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Business or other for-profit and non-profit institutions.

Estimated Number of Respondents: 30.

Estimated Number of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 23.

Copies of this information collection can be obtained from MaryPat Daskal, Program Development and Regulatory Analysis, at (202) 720–7853, FAX: (202) 720–8435.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: October 21, 2010.

James R. Newby,

Chief of Staff, Rural Utilities Service.

[FR Doc. 2010–27269 Filed 10–28–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Forest Service

Helena National Forest; Montana; Blackfoot Travel Plan EIS

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: The Helena National Forest is preparing an Environmental Impact Statement (EIS) to analyze the effects of proposed changes to the existing motorized public access routes and prohibitions within the Blackfoot travel planning area. Consistent with the Forest Service travel planning regulations, the resulting available public motorized access routes and areas would be designated on a Motor Vehicle Use Map (MVUM). Upon publishing the MVUM, public use of a motor vehicle other than in accordance with those designations would be prohibited.

DATES: Comments concerning the scope of the analysis must be received by November 29, 2010. The draft environmental impact statement is expected July 2011 and the final environmental impact statement is expected January 2012.

ADDRESSES: Send written comments to the Helena National Forest Lincoln Ranger District, 1569 Hwy 200, Lincoln, MT 59639. Comments may also be sent via e-mail to *comments-northern-helena-lincoln@fs.fed.us,* or via facsimile to 406–362–4253. Please indicate the name "Blackfoot Travel Plan" in the subject line of your e-mail.

FOR FURTHER INFORMATION CONTACT: Jaclyn Heinert, Interdisciplinary Team Leader (406) 362–7000 or e-mail *jmheinert@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 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The overall objective of this proposal is to provide a manageable system of designated public motorized access routes and areas within the Blackfoot Travel area, consistent with and to achieve the purposes of Forest Service travel management regulations at 36 CFR 212 Subpart B. The existing system of available public motor vehicle routes and areas in the Blackfoot Travel area is the culmination of multiple agency decisions over recent decades. Public motor vehicle use of the majority of this available system continues to be manageable and consistent with the current travel management regulation. Exceptions have been identified, based on public input and the criteria listed at 36 CFR 212.55, and in these cases changes are proposed to meet the overall objectives. The decisions will ensure compliance with the Forest Plan and Interagency requirements for grizzly bear security and habitat within the recovery zone.

Proposed Action

The Helena National Forest proposes the following changes to the existing motorized public access routes and prohibitions within the Blackfoot travel planning area. Consistent with the travel planning regulations at 36 CFR 212 Subpart B, the resulting available public motorized access routes and areas would be designated on a Motor Vehicle Use Map and the prohibition at 36 CFR 261.13 would take effect. 36 CFR 261.13 would prohibit public use of a motor vehicle other than in accordance with those designations.

The proposed action would:

- Change 1.8 miles of currently closed yearlong routes or user-created routes to open with seasonal restrictions.
- Change 5.1 miles of seasonally restricted routes to having a different seasonal restriction.
- Change 6.7 miles of currently closed yearlong or user-created routes to being open yearlong.
- Change 9.4 miles of seasonally restricted routes to become open yearlong.
- Put 82.1 miles of currently open routes into storage (where routes are self-maintaining in non-use status for up to 20 years by re-contouring access points, and removing culverts).
- Change 2.5 miles of open seasonally or open yearlong routes to closed yearlong.
- Close 7.9 miles (estimated) of user-created routes.
- Create 41.4 miles of new motorized trails from currently seasonally restricted, open yearlong, user-created, and previously decommissioned routes.
- Create 1.5 miles of single-track motorized trail from currently double-track motorized trail.
- Construct 1.6 miles of new road.
- Place 65.5 miles of currently closed routes into storage.
- Place 82.1 miles of currently open routes into storage.
- Obliterate 8.1 miles of closed yearlong, open yearlong, or user-created routes.
- Create 5.5 miles of non-motorized trails from currently closed or user-created routes.
- Create 1.5 miles of non-motorized trails from currently open or seasonally restricted routes.
- Create 13.7 miles of non-motorized trails from currently single or double-track motorized routes.
- Create 33 miles of mountain bike trails on Forest Service land (may also include non-motorized or motorized uses).

Responsible Official

The Responsible Official is Kevin Riordan, Helena National Forest Supervisor.

Nature of Decision To Be Made

The decision to be made is whether to implement the proposed action or meet the purpose and need for action through some other alternative. He will consider the comments, disclosures of environmental consequences, and applicable laws, regulations, and policies in making the decision and stating the rationale in the Record of Decision.

Preliminary Issues

Public input from previous scoping processes, and through input gathered from collaboration identified several areas of particular interest to the public. Many comments spoke specifically to the Continental Divide National Scenic Trail, the Helmville-Gould trail, grizzly bear, elk, and bull trout habitat and conflicts with motorized and non-motorized uses. These topics generated the most public interest regarding motorized and non-motorized uses.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. It is important that reviewers provide their comments at such times and in such a way that they are useful to the Agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered; however, anonymous comments will not provide the respondent with standing to participate in subsequent administrative review or judicial review.

Two opportunities to provide public comments in person will be provided. Staff members will be available on November 18 and November 30, 2010 from 4 p.m.–7 p.m. MDT at the Lincoln Ranger District, 1569 Hwy 200 Lincoln, Montana to visit with the public and discuss site-specific comments. If an individual, group or organization has any questions or would like to set up a meeting or field trip please contact Jaclyn Heinert at the Lincoln Ranger District of the Helena National Forest (406) 362–7000.

Dated: October 21, 2010.

Kevin Riordan,

Forest Supervisor.

[FR Doc. 2010–27353 Filed 10–28–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Caribou-Targhee National Forest; Idaho and Wyoming; Revision of the Notice of Intent To Prepare a Supplemental Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Revision of the Notice of Intent (NOI) to prepare a Supplemental Environmental Impact Statement for a Forest Plan Amendment to the 1997 Revised Forest Plan for the Targhee National Forest, located in Bonneville, Clark, Fremont, Lemhi, Madison and Teton counties, ID, and Teton and Lincoln counties, WY. The previous Notices of Intent were published in the **Federal Register** on May 30, 2007 (72(103):29948–29949, as "Big Bend Ridge Vegetation Management Project and Timber Sale Supplemental Environmental Impact Statement and Proposed Targhee Revised Forest Plan Amendment") and on May 21, 2008 (73(99):29480–29481, as "Supplemental Environmental Impact Statement for the Targhee Revised Forest Plan With Proposed Forest Plan Amendment").

SUMMARY: The Caribou-Targhee National Forest (Forest) published two notices of intent (May 2007 and May 2008) to prepare a supplemental environmental impact statement (EIS) to amend the 1997 Revised Forest Plan (1997 Plan) for the Targhee portion of the Forest (Targhee). The Forest has revised the proposed amendment and will prepare an EIS instead of a supplemental EIS to amend the 1997 Plan. The revised proposed amendment: (1) Provides direction to maintain the characteristics of old-growth forests where they exist and eliminate a "quota" for old-growth and late-seral forested vegetation by principal watershed or ecological subsection; (2) replaces requirements for maintaining "biological potential" with clear direction for snag retention to provide habitat for cavity-nesting birds; and (3) provides direction to maintain habitat in northern goshawk, boreal owl and great gray owl territories affected by vegetation projects. The Forest believes these new approaches to vegetation management would better provide wildlife habitat. The Forest seeks comments on the revised proposal in order to: (1) Clarify the issues, (2) decide how the proposed amendment may need to be modified, and (3) determine whether or not it is necessary to develop additional alternative(s) for analysis in the draft EIS.

DATES: Comments concerning the scope of this analysis must be received by November 29, 2010. The draft EIS is expected in January 2011. The final EIS is expected in April 2011.

ADDRESSES: Send written comments to Megan Bogle, Forest Planner, Caribou-Targhee National Forest, P.O. Box 777, Driggs, Idaho 83422. Electronic comments can be sent to *comments-intermtn-caribou-targhee@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Megan Bogle, Forest Planner, Caribou-Targhee National Forest, P.O. Box 777, Driggs, Idaho 83422. Additional information on the proposed Plan Amendment may be accessed by clicking on the "NEPA documents for projects" link on the Forest Web site: *http://www.fs.fed.us/r4/caribou-targhee/projects/.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose of and Need for the Action

The 1997 Plan includes direction that has proven difficult to implement. Specifically, the 1997 Plan requires 20 percent of forested vegetation be maintained in the old-growth and late-seral age classes in each principal watershed. After much deliberation, the Forest believes that 1997 Plan direction to maintain a certain amount of old-growth and late-seral vegetation does not reflect the ecological capability of the Targhee. Because of the stand characteristics of lodgepole pine and aspen cover types, and the frequency of natural change and disturbances in the ecosystem, some principal watersheds may never meet the 20 percent guideline. Consequently, the Forest proposes to amend the 1997 Plan to maintain old-growth forests where they actually occur.

The concept of biological potential used in the 1997 Plan has also proven problematic because of conflicting requirements at the watershed scale and Management Prescription scale. Clear and practical direction is necessary to ensure that adequate numbers of snags and/or green trees having evidence of cavities, nesting activity, or decadence would be retained where commercial timber harvest occurs.

Additionally, the elimination of redundant guidelines for the management of forested vegetation could clarify the 1997 Plan direction.

Proposed Action

The Forest is proposing to amend the 1997 Plan to create more consistent and clear management direction for old-growth forests and snag retention. The analysis for this amendment will describe habitat relationships for selected wildlife species associated with forested vegetation. These relationships would be described in the proposed amendment and monitored through time to ensure that adequate habitat is maintained for these species. The proposed amendment would include changes to the associated monitoring items and update definitions in the 1997 Plan glossary. The proposed amendment would apply only to the Targhee portion of the Caribou-Targhee National Forest.

The proposed amendment would not authorize or approve any specific actions or activities. Prior to implementing any site-specific projects, the Forest would determine consistency with the 1997 Plan, as amended, to ensure compliance with the National Environmental Policy Act and other applicable laws and regulations. The following amendments to the 1997 Plan are proposed:

Vegetation—Forestwide Direction for Old-Growth Forests

1. Delete the forest-wide guideline for old-growth and late-seral forest stages listed as number 6 and found on pages III–12–13 of the 1997 Plan.

Exception: Retain standard number (6)(3): Use the definition of old-growth characteristics by forest type found in *Characteristics of Old-Growth Forests in the Intermountain Region* (Hamilton 1993).

2. Replace the guideline in Item 1 above with the following:

a. Prescribed fire and mechanical treatments in old-growth stands shall not reduce old-growth characteristics below the minimum standards described in *Characteristics of Old-Growth Forests in the Intermountain Region* (Hamilton 1993) and further defined in the March 2, 2007 Regional Forester's letter of clarification (Guideline).″

Exceptions: This guideline does not apply to:

i. Highway and utility corridors where hazard tree removal is necessary for public safety;

ii. Management Prescriptions:

4.1 (Developed Recreation Sites)
4.2 (Special Use Permit Recreation Sites)
4.3 (Dispersed Camping Management)
8.1 (Concentrated Developed Areas)

b. Prescribed fire and mechanical treatments within old-growth stands shall be limited to treatments necessary to sustain old-growth forest composition and structure and improve the likelihood that old-growth forests are retained on the landscape. Examples of these tools are thinning-from-below and under burning to reduce the risk of stand-replacing fire (Guideline).

Wildlife—Direction for Snags/Cavity Nesting Habitat

1. Delete forest-wide guideline numbers 1, 2 and 3 for Snag/Cavity Nesting Habitat listed on pages III–16–17.

2. Delete the Management Prescription guidelines related to snag retention and biological potential for woodpeckers listed in the table below:

Management Prescription		Biological Potential (percent)
2.6.1[a]	Grizzly Bear Habitat (No ASQ, no cross-country, no sheep) (III–98)	60
2.8.3	Aquatic Influence Zone (III–109)	100
3.2[b,c,d,g,i,j]	Semi-primitive Motorized (III–121)	60
5.1[c]	Timber Management (III–136)	40
5.1.3[a–b]	Timber Management (No clear-cutting, urban interface) (III–137)	40
5.1.4[a–d]	Timber Management (Big Game Security Emphasis) (III–139)	40
5.2.1	Visual Quality Improvement (III–143)	40
5.3.5	Grizzly Bear Habitat (NIC for ASQ, no cross-county, no sheep) (III–148)	60
5.4[a,b,c]	Elk Summer Range (III–153)	60

3. Replace the guidelines listed in items 1 and 2 above with:

a. Commercial timber harvest will not reduce the number of snags and/or green trees below the numbers in the table below. This will be calculated as an average for the total treatment unit acres within a project area to allow variability between treatment units and retain a more natural, clumped distribution of snags and green trees (Guideline).″

Vegetation category (SAF cover type[1])	Minimum average snags and/or green trees per acre to retain		
	>= 8″ dbh[2]	>= 12″ dbh	Total
Aspen	8.3	N/A	8.3
Cottonwood	3.2	4.9	8.1
Douglas-fir and			
Spruce-Fir	3.7	5.5	9.2
Lodgepole pine	8.7	N/A	8.7

Exceptions: This guideline does not apply to:

i. Designated personal-use firewood areas;

ii. Highway and utility corridors where hazard tree removal is necessary for public safety;

iii. Management Prescriptions:

4.1 (Developed Recreation Sites)

4.2 (Special Use Permit Recreation Sites)

4.3 (Dispersed Camping Management)

8.1 (Concentrated Developed Areas)

b. Large diameter snags and/or green trees having evidence of cavities, nesting activity, or decadence would be given priority for retention (Guideline).

c. Public workforce and contractor safety will be considered and provided for in selecting the arrangement of retained snags and trees (Standard).

Wildlife—Forestwide Direction for Northern Goshawk, Boreal and Great Gray Owl Habitat

1. Delete the forest-wide standards and guidelines for northern goshawk habitat (entire table on III–21), guideline number 2 for boreal owl habitat (III–22) and standard number 2 for great gray owl habitat (III–22).

2. Replace the above standards and guidelines with the following guideline:

a. Utilize site-specific data to predict whether a proposed project may negatively impact Northern goshawks, boreal owls, and/or great gray owls, and whether habitat occurs within the project area. If there is habitat and the species may be negatively impacted by the project:

i. Survey for the presence of Northern goshawks, boreal owls and/or great gray owls at least once prior to project implementation.

ii. Design projects to maintain adequate amounts of habitat in known territories.

Big Hole Subsection and Caribou Subsection—Guidelines for Old-Growth

1. Delete the following guideline applicable in both subsections: "Within one mile of the Palisades Reservoir and the South Fork of the Snake River, emphasis will be given to managing old-growth Douglas-fir, spruce and cottonwood habitats for wildlife species" (III–61 and 62).

Monitoring

The proposed amendment would update the 1997 Plan monitoring requirements related to the proposed above changes (Chapter V).

Glossary and Definitions

The proposed amendment would update 1997 Plan definitions related to the above changes (Glossary).

Name and Address of the Responsible Official

Brent Larson, Forest Supervisor, 1405 Hollipark Drive, Idaho Falls, ID 83445.

Nature of the Decision To Be Made (*See FSH 1909.15, section 11.22***)**

The decision to be made is to approve the proposed amendment to the 1997 Plan; approve a modification of the proposed amendment; or not to amend the 1997 Plan at this time.

Description of the Scoping Process

This corrected NOI continues the scoping process, which guides the development of the EIS.

Applicable Planning Rule

On December 18, 2009 the Department reinstated the previous planning rule, commonly known as the 2000 planning rule in the **Federal Register** (**Federal Register**, Volume 74, No. 242, Friday, December 18, 2009, pages 67059 thru 67075). The transition provisions of the reinstated rule (36 CFR 219.35 and appendices A and B) allow use of the provisions of the National Forest System land and resource management planning rule in effect prior to the effective date of the 2000 Rule (November 9, 2000), commonly called the 1982 planning rule, to amend or revise plans. The Caribou-Targhee National Forest has elected to use the provisions of the 1982 planning rule including the requirement to prepare an EIS, to complete its plan revision.

Authority: 16 U.S.C. 1600–1614; 36 CFR 219.35 (74 FR 67073–67074).

Dated: October 22, 2010.

Brent Larson,

Forest Supervisor.

[FR Doc. 2010–27334 Filed 10–28–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Extension of Comment Period

AGENCY: Forest Service, USDA.

ACTION: Notice: Notice of Extension of Comment Period.

SUMMARY: The USDA Forest Service published a Notice of Intent in the **Federal Register** of October 5, 2010, requesting comments concerning a Notice of Intent to Prepare an Environmental Impact Statement for the Greens Creek Mine Tailings Expansion. The comment period is to be extended.

FOR FURTHER INFORMATION CONTACT: Chad VanOrmer, 907–789–6202 or Sarah Samuelson, 907–789–6274.

Correction

In the **Federal Register** of October 5, 2010, in FR Doc. 2010–24907, on page 61415, in the first column, correct the **DATES** caption to read:

DATES: Comments concerning the scope of the analysis must be received by November 19, 2010.

Dated: October 22, 2010.

Forrest Cole,

Forest Supervisor.

[FR Doc. 2010–27361 Filed 10–28–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers To Be Used for Publication of Legal Notice of Appealable Decisions and Publication of Notice of Proposed Actions for Southern Region; Alabama, Kentucky, Georgia, Tennessee, Florida, Louisiana, Mississippi, Virginia, West Virginia, Arkansas, Oklahoma, North Carolina, South Carolina, Texas, Puerto Rico

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: Deciding Officers in the Southern Region will publish notice of decisions subject to administrative appeal under 36 CFR parts 215 and 219 in the legal notice section of the newspapers listed in the **SUPPLEMENTARY INFORMATION** section of this notice. As provided in 36 CFR part 215.5 and 36 CFR part 219.14 the public shall be advised through **Federal Register** notice, of the newspaper of record to be utilized for publishing legal notice of decisions. Newspaper publication of notice of decisions is in addition to direct notice of decisions to those who have requested it and to those who have participated in project planning. Responsible Officials in the Southern Region will also publish notice of proposed actions under 36 CFR part 215.5 in the newspapers that are listed in the **SUPPLEMENTARY INFORMATION** section of this notice. As provided in 36 CFR part 215.5, the public shall be advised, through **Federal Register** notice, of the newspaper of record to be

[1] Eyre, F.H. editor 1980 *Cover Types of the United States and Canada* Society of American Foresters, Washington D.C. pp 80–141.

[2] dbh: diameter at breast height.

utilized for publishing notices on proposed actions. Additionally, the Deciding Officers in the Southern Region will publish notice of the opportunity to object to a proposed authorized hazardous fuel reduction project under 36 CFR part 218.4 or developing, amending or revising land management plans under 36 CFR 219.9 in the legal notice section of the newspapers listed in the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: Use of these newspapers for purposes of publishing legal notice of decisions subject to appeal under 36 CFR parts 215 and 219.14, notices of proposed actions under 36 CFR part 215, and notices of the opportunity to object under 36 CFR 218 and 36 CFR 219 shall begin the first day after the date of this publication.

FOR FURTHER INFORMATION CONTACT: James W. Bennett, Regional Appeal Coordinator, Southern Region, Planning, 1720 Peachtree Road, NW., Atlanta, Georgia 30309, Phone: 404/347–2788.

SUPPLEMENTARY INFORMATION: Deciding Officers in the Southern Region will give legal notice of decisions subject to appeal under 36 CFR 219.14, the Responsible Officials in the Southern Region will give notice of decisions subject to appeal under 36 CFR part 215 and opportunity to object to a proposed authorized hazardous fuel reduction project under 36 CFR part 218 or developing, amending or revising land management plans under 36 CFR 219.9 in the following newspapers which are listed by Forest Service administrative unit. Responsible Officials in the Southern Region will also give notice of proposed actions under 36 CFR 215.5 in the following newspapers of record which are listed by Forest Service administrative unit. The timeframe for comment on a proposed action shall be based on the date of publication of the notice of the proposed action in the newspaper of record. The timeframe for appeal shall be based on the date of publication of the legal notice of the decision in the newspaper of record for 36 CFR parts 215 and 219.14. The timeframe for an objection shall be based on the date of publication of the legal notice of the opportunity to object for projects subject to 36 CFR part 218 or 36 CFR part 219.

Where more than one newspaper is listed for any unit, the first newspaper listed is the newspaper of record that will be utilized for publishing the legal notice of decisions and calculating timeframes. Secondary newspapers listed for a particular unit are those newspapers the Deciding Officer/ Responsible Official expects to use for purposes of providing additional notice.

The following newspapers will be used to provide notice.

Southern Region

Regional Forester Decisions

Affecting National Forest System lands in more than one Administrative unit of the 15 in the Southern Region, *Atlanta Journal-Constitution,* published daily in Atlanta, GA. Affecting National Forest System lands in only one Administrative unit or only one Ranger District will appear in the newspaper of record elected by the National Forest, National Grassland, National Recreation Area, or Ranger District as listed below.

National Forests in Alabama, Alabama

Forest Supervisor Decisions

Affecting National Forest System lands in more than one Ranger District of the 6 in the National Forests in Alabama, *Montgomery Advertiser,* published daily in Montgomery, AL. Affecting National Forest System lands in only one Ranger District will appear in the newspaper of record elected by the Ranger District as listed below.

District Ranger Decisions

Bankhead Ranger District: Northwest Alabamian, published bi-weekly (Wednesday & Saturday) in Haleyville, AL.

Conecuh Ranger District: The Andalusia Star News, published daily (Tuesday through Saturday) in Andalusia, AL.

Oakmulgee Ranger District: The Tuscaloosa News, published daily in Tuscaloosa, AL.

Shoal Creek Ranger District: The Anniston Star, published daily in Anniston, AL.

Talladega Ranger District: The Daily Home, published daily in Talladega, AL.

Tuskegee Ranger District: Tuskegee News, published weekly (Thursday) in Tuskegee, AL.

Chattahoochee-Oconee National Forest, Georgia

Forest Supervisor Decisions

The Times, published daily in Gainesville, GA.

District Ranger Decisions

Blue Ridge Ranger District: The News Observer (newspaper of record) published bi-weekly (Tuesday & Friday) in Blue Ridge, GA.

North Georgia News, (newspaper of record) published weekly (Wednesday) in Blairsville, GA.

The Dahlonega Nuggett, (secondary) published weekly (Wednesday) in Dahlonega, GA.

Towns County Herald, (secondary) published weekly (Thursday) in Hiawassee, GA.

Conasauga Ranger District: Daily Citizen, published daily in Dalton, GA.

Chattooga River Ranger District: The Northeast Georgian, (newspaper of record) published bi-weekly (Tuesday & Friday) in Cornelia, GA.

Clayton Tribune, (newspaper of record) published weekly (Thursday) in Clayton, GA.

The Toccoa Record, (secondary) published weekly (Thursday) in Toccoa, GA.

White County News, (secondary) published weekly (Thursday) in Cleveland, GA.

Oconee Ranger District: Eatonton Messenger, published weekly (Thursday) in Eatonton, GA.

Cherokee National Forest, Tennessee

Forest Supervisor Decisions

Knoxville News Sentinel, published daily in Knoxville, TN.

District Ranger Decisions

Nolichucky-Unaka Ranger District: Greeneville Sun, published daily (except Sunday) in Greeneville, TN.

Ocoee-Hiwassee Ranger District: Polk County News, published weekly (Wednesday) in Benton, TN.

Tellico Ranger District: Monroe County Advocate & Democrat, published tri-weekly (Wednesday, Friday, and Sunday) in Sweetwater, TN.

Watauga Ranger District: Johnson City Press, published daily in Johnson City, TN.

Daniel Boone National Forest, Kentucky

Forest Supervisor Decisions

Lexington Herald-Leader, published daily in Lexington, KY.

District Ranger Decisions

Cumberland Ranger District: Lexington Herald-Leader, published daily in Lexington, KY.

London Ranger District: The Sentinel-Echo, published tri-weekly (Monday, Wednesday, and Friday) in London, KY.

Redbird Ranger District: Manchester Enterprise, published weekly (Thursday) in Manchester, KY.

Stearns Ranger District: McCreary County Record, published weekly (Tuesday) in Whitley City, KY.

El Yunque National Forest, Puerto Rico

Forest Supervisor Decisions

El Nuevo Dia, published daily in Spanish in San Juan, PR.

Puerto Rico Daily Sun, published daily in English in San Juan, PR.

National Forests in Florida, Florida

Forest Supervisor Decisions

The Tallahassee Democrat, published daily in Tallahassee, FL.

District Ranger Decisions

Apalachicola Ranger District: Calhoun-Liberty Journal, published weekly (Wednesday) in Bristol, FL.

Lake George Ranger District: The Ocala Star Banner, published daily in Ocala, FL.

Osceola Ranger District: The Lake City Reporter, published daily (Monday–Saturday) in Lake City, FL.

Seminole Ranger District: The Daily Commercial, published daily in Leesburg, FL.

Wakulla Ranger District: The Tallahassee Democrat, published daily in Tallahassee, FL.

Francis Marion & Sumter National Forests, South Carolina

Forest Supervisor Decisions

The State, published daily in Columbia, SC.

District Ranger Decisions

Andrew Pickens Ranger District: The Daily Journal, published daily (Tuesday through Saturday) in Seneca, SC.

Enoree Ranger District: Newberry Observer, published tri-weekly (Monday, Wednesday, and Friday) in Newberry, SC.

Long Cane Ranger District: Index-Journal, published daily in Greenwood, SC.

Wambaw Ranger District: Post and Courier, published daily in Charleston, SC.

Witherbee Ranger District: Post and Courier, published daily in Charleston, SC.

George Washington and Jefferson National Forests, Virginia and West Virginia

Forest Supervisor Decisions

Roanoke Times, published daily in Roanoke, VA.

District Ranger Decisions

Clinch Ranger District: Coalfield Progress, published bi-weekly (Tuesday and Friday) in Norton, VA.

North River Ranger District: Daily News Record, published daily (except Sunday) in Harrisonburg, VA.

Glenwood-Pedlar Ranger District: Roanoke Times, published daily in Roanoke, VA.

James River Ranger District: Virginian Review, published daily (except Sunday) in Covington, VA.

Lee Ranger District: Shenandoah Valley Herald, published weekly (Wednesday) in Woodstock, VA.

Mount Rogers National Recreation Area: Bristol Herald Courier, published daily in Bristol, VA.

Eastern Divide Ranger District: Roanoke Times, published daily in Roanoke, VA.

Warm Springs Ranger District: The Recorder, published weekly (Thursday) in Monterey, VA.

Kisatchie National Forest, Louisiana

Forest Supervisor Decisions

The Town Talk, published daily in Alexandria, LA.

District Ranger Decisions

Calcasieu Ranger District: The Town Talk, (newspaper of record) published daily in Alexandria, LA.

The Leesville Daily Leader, (secondary) published daily in Leesville, LA.

Caney Ranger District: Minden Press Herald, (newspaper of record) published daily in Minden, LA.

Homer Guardian Journal, (secondary) published weekly (Wednesday) in Homer, LA.

Catahoula Ranger District: The Town Talk, published daily in Alexandria, LA.

Kisatchie Ranger District: Natchitoches Times, published daily (Tuesday thru Friday and on Sunday) in Natchitoches, LA.

Winn Ranger District: Winn Parish Enterprise, published weekly (Wednesday) in Winnfield, LA.

Land Between The Lakes National Recreation Area, Kentucky and Tennessee

Area Supervisor Decisions

The Paducah Sun, published daily in Paducah, KY.

National Forests in Mississippi, Mississippi

Forest Supervisor Decisions

Clarion-Ledger, published daily in Jackson, MS.

District Ranger Decisions

Bienville Ranger District: Clarion-Ledger, published daily in Jackson, MS.

Chickasawhay Ranger District: Clarion-Ledger, published daily in Jackson, MS.

Delta Ranger District: Clarion-Ledger, published daily in Jackson, MS.

De Soto Ranger District: Clarion Ledger, published daily in Jackson, MS.

Holly Springs Ranger District: Clarion-Ledger, published daily in Jackson, MS.

Homochitto Ranger District: Clarion-Ledger, published daily in Jackson, MS.

Tombigbee Ranger District: Clarion-Ledger, published daily in Jackson, MS.

National Forests in North Carolina, North Carolina

Forest Supervisor Decisions

The Asheville Citizen-Times, published Wednesday thru Sunday, in Asheville, NC.

District Ranger Decisions

Appalachian Ranger District: The Asheville Citizen-Times, published Wednesday thru Sunday, in Asheville, NC.

Cheoah Ranger District: Graham Star, published weekly (Thursday) in Robbinsville, NC.

Croatan Ranger District: The Sun Journal, published daily in New Bern, NC.

Grandfather Ranger District: McDowell News, published daily in Marion, NC.

Nantahala Ranger District: The Franklin Press, published bi-weekly (Tuesday and Friday) in Franklin, NC.

Pisgah Ranger District: The Asheville Citizen-Times, published Wednesday thru Sunday, in Asheville, NC.

Tusquitee Ranger District: Cherokee Scout, published weekly (Wednesday) in Murphy, NC.

Uwharrie Ranger District: Montgomery Herald, published weekly (Wednesday) in Troy, NC.

Ouachita National Forest, Arkansas and Oklahoma

Forest Supervisor Decisions

Arkansas Democrat-Gazette, published daily in Little Rock, AR.

District Ranger Decisions

Caddo-Womble Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR.

Jessieville-Winona-Fourche Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR.

Mena-Oden Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR.

Oklahoma Ranger District (Choctaw; Kiamichi; and Tiak) Tulsa World, published daily in Tulsa, OK.

Poteau-Cold Springs Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR.

Ozark-St. Francis National Forests, Arkansas

Forest Supervisor Decisions

The Courier, published daily (Tuesday through Sunday) in Russellville, AR.

District Ranger Decisions

Bayou Ranger District: The Courier, published daily (Tuesday through Sunday) in Russellville, AR.

Boston Mountain Ranger District: Southwest Times Record, published daily in Fort Smith, AR.

Buffalo Ranger District: The Courier, published daily (Tuesday through Sunday) in Russellville, AR.

Magazine Ranger District: Southwest Times Record, published daily in Fort Smith, AR.

Pleasant Hill Ranger District: Johnson County Graphic, published weekly (Wednesday) in Clarksville, AR.

St. Francis National Forest: The Daily World, published daily (Sunday through Friday) in Helena, AR.

Sylamore Ranger District: Stone County Leader, published weekly (Wednesday) in Mountain View, AR.

National Forests and Grasslands in Texas, Texas

Forest Supervisor Decisions

The Lufkin Daily News, published daily in Lufkin, TX.

District Ranger Decisions

Angelina National Forest: The Lufkin Daily News, published daily in Lufkin, TX.

Caddo & LBJ National Grasslands: Denton Record-Chronicle, published daily in Denton, TX.

Davy Crockett National Forest: The Lufkin Daily News, published daily in Lufkin, TX.

Sabine National Forest: The Lufkin Daily News, published daily in Lufkin, TX.

Sam Houston National Forest: The Courier, published daily in Conroe, TX.

Jerome Thomas,

Deputy Regional Forester.

[FR Doc. 2010–27363 Filed 10–28–10; 8:45 am]

BILLING CODE 3410–11–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collections to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be sent via e-mail to *Ross_A._Rutledge@omb.eop.gov* or fax to 202–395–3086. Copies of submission may be obtained by calling (202) 712–1365.

SUPPLEMENTARY INFORMATION: *OMB Number:* OMB 0412–0565.

Form Number: N/A.

Title: Applicant's Certification that it Does not Support Terrorist Organizations or tIndividuals.

Type of Submission: Renewal of Information Collection.

Purpose: The United States Agency for International Development (USAID) needs to require applicants for assistance to certify that it does not and will not engage in financial transactions with, and does not and will not provide material support and resources to individuals or organizations that engage in terrorism. The purpose of this requirement is to assure that USAID does not directly provide support to such organizations or individuals, and to assure that recipients are aware of these requirements when it considers individuals or organizations are subrecipients.

Annual Reporting Burden

Respondents: 2,000.

Total annual responses: 4,000.

Total annual hours requested: 1,500 hours.

Dated: October 21, 2010.

Beth Salamanca,

Acting Director, Office of Management Services, Bureau for Management.

[FR Doc. 2010–27369 Filed 10–28–10; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XZ47

Endangered and Threatened Species; 5-Year Review

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

ACTION: Notice of availability of a 5-year review for the U.S. Distinct Population Segment (DPS) of smalltooth sawfish.

SUMMARY: NMFS announces the availability of a 5-year review of the U.S. DPS of smalltooth sawfish (*Pristis pectinata*) as required by the Endangered Species Act of 1973 (ESA). The U.S. DPS of smalltooth sawfish is listed as endangered under the ESA. Based on the best available scientific and commercial data, our 5-year review indicates that the U.S. DPS of smalltooth sawfish should remain listed as endangered species because it is in danger of extinction throughout its range. Therefore, the 5-year review recommends no change in listing.

ADDRESSES: Additional information about the 5-year review may be obtained by writing to Ms. Shelley Norton, NMFS, Southeast Regional Office, Protected Resources Division, 263 13th Avenue South, St. Petersburg, FL 33701 or send an electronic message to *Shelley.norton@noaa.gov.* Electronic copies of the 5-year review are available online at the NMFS Southeast Regional Office Web site: *http://sero.nmfs.noaa.gov/pr/SmalltoothSawfish.htm.*

FOR FURTHER INFORMATION CONTACT: Shelley Norton, telephone (727) 824–5312.

SUPPLEMENTARY INFORMATION:

Background

Under the ESA, a list of endangered and threatened wildlife and plant species must be maintained. The list is published at 50 CFR 17.11 (for animals) and 17.12 (for plants). Section 4(c)(2) of the ESA requires that NMFS conduct a review of listed species at least once every five years, and on the basis of such review, determine whether any species should be removed from the List (delisted), or reclassified from endangered to threatened or from threatened to endangered. A 5-year review considers the best available scientific and commercial data, including all new information that has become available since the listing determination or most recent status review for a species.

NMFS initiated the 5-year review of the U.S. DPS of smalltooth sawfish in May 2008, and solicited information from the public (73 FR 29483; May 21, 2008). NMFS incorporated two comments provided by the Everglades National Park and Biscayne National Park and the comments provided by scientific peer reviewers. NMFS concludes that the 5-year review meets the requirements of the ESA.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: October 26, 2010.

Therese Conant,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–27450 Filed 10–28–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA010

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Tule Chinook Workgroup (TCW) will hold a meeting to review initial work products and revise future work plans relative to developing an abundance-based harvest management approach for Columbia River natural tule Chinook. This meeting of the TCW is open to the public.

DATES: The meeting will be held Thursday, December 9, 2010, from 9 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Pacific Council Office, Large Conference Room, 7700 NE. Ambassador Place, Suite 101, Portland, OR 97220–1384; telephone: (503) 820–2280.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Tracy, Salmon Management Staff Officer, Pacific Fishery Management Council; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: This meeting of the TCW will involve review of initial work products and refining future work plans. Eventually, TCW work products will be reviewed by the Council, and if approved, would be submitted to NMFS for possible consideration in the next Lower Columbia River tule biological opinion for ocean salmon seasons in 2012 and beyond, and distributed to State and Federal recovery planning processes. In the event a usable approach emerges from this process, the Council may consider a fishery management plan (FMP) amendment process beginning after November 2011 to adopt the approach as a formal conservation objective in the Salmon FMP.

Although non-emergency issues not contained in the meeting agenda may come before the TCW for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: October 26, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–27392 Filed 10–28–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Fire Protection Association (NFPA) Proposes To Revise Codes and Standards

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Fire Protection Association (NFPA) proposes to revise some of its safety codes and standards and requests proposals from the public to amend existing or begin the process of developing new NFPA safety codes and standards. The purpose of this request is to increase public participation in the system used by NFPA to develop its codes and standards. The publication of this notice of request for proposals by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

The NFPA process provides ample opportunity for public participation in the development of its codes and standards. All NFPA codes and standards are revised and updated every three to five years in Revision Cycles that begin twice each year and take approximately two years to complete. Each Revision Cycle proceeds according to a published schedule that includes final dates for all major events in the process. The code revision Process contains five basic steps that are followed for developing new documents as well as revising existing documents: Call for Proposals; Publishing the Report on Proposals (ROP); Call for Comments on the Committee's disposition of the Proposals and publication of these Comments in the Report on Comments (ROC); the Association Technical Meeting at the NFPA Conference & Expo; and finally, the Standards Council Consideration and Issuance of documents.

Note: Anyone wishing to make Amending Motions on the Technical Committee Reports (ROP and ROC) must signal his or her intention by submitting a Notice of Intent to Make a Motion by the Deadline stated in the ROC. Certified motions will then be posted on the NFPA Web site. Documents that receive notice of proper Amending Motions (Certified Amending Motions) will be presented for action at the annual June Association Technical Meeting. Documents that receive no motions will be forwarded directly to the Standards Council for action on issuance.

For more information on these new rules and for up-to-date information on schedules and deadlines for processing NFPA Documents, check the NFPA Web site at *http://www.nfpa.org,* or contact NFPA Codes and Standards Administration.

DATES: Interested persons may submit proposals on or before the dates listed with the standards.

ADDRESSES: Amy Beasley Cronin, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02169–7471.

FOR FURTHER INFORMATION CONTACT: Amy Beasley Cronin, Secretary, Standards Council, at above address, (617) 770–3000.

SUPPLEMENTARY INFORMATION:

Background

The National Fire Protection Association (NFPA) develops building, fire, and electrical safety codes and standards. Federal agencies frequently use these codes and standards as the basis for developing Federal regulations concerning safety. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR Part 51.

When a Technical Committee begins the development of a new or revised NFPA code or standard, it enters one of two Revision Cycles available each year. The Revision Cycle begins with the Call for Proposals, that is, a public notice asking for any interested persons to submit specific written proposals for developing or revising a code or standard. The Call for Proposals is published in a variety of publications. Interested parties have approximately twenty weeks to respond to the Call for Proposals.

Following the Call for Proposals period, the Technical Committee holds

a meeting to consider and accept, reject or revise, in whole or in part, all the submitted Proposals. The committee may also develop its own Proposals. A document known as the Report on Proposals, or ROP, is prepared containing all the Public Proposals, the Technical Committees' action on each Proposal, as well as all Committee-generated Proposals. The ROP is then submitted for the approval of the Technical Committee by a formal written ballot. If the ROP does not receive approval by a two-thirds vote calculated in accordance with NFPA rules, the Report is returned to the committee for further consideration and is not published. If the necessary approval is received, the ROP is published in a compilation of Reports on Proposals issued by NFPA twice yearly for public review and comment, and the process continues to the next step.

The Reports on Proposals are sent automatically free of charge to all who submitted Proposals and each Committee member, as well as anyone else who requests a copy. All ROPs are also available for free downloading at *http://www.nfpa.org.*

Once the ROP becomes available, there is a 60-day comment period during which anyone may submit a Public Comment on the proposed changes in the ROP. The Committee then reconvenes at the end of the comment period and acts on all Comments.

As before, a two-thirds approval vote by written ballot of the eligible members of the Committee is required for approval of actions on the Comments. All of this information is compiled into a second report, called the Report on Comments (ROC), which, like the ROP, is published, and is made available for public review for a seven-week period.

The process of public input and review does not end with the publication of the ROP and ROC. Following the completion of the Proposal and Comment periods, there is a further opportunity for debate and discussion through the Association Technical Meeting that take place at the NFPA Conference & Expo.

The Association Technical Meeting provides an opportunity for the final Technical Committee Report (*i.e.,* the ROP and ROC) on each proposed new or revised code or standard to be presented to the NFPA membership for the debate and consideration of motions to amend the Report. Before making an allowable motion at an Association Technical Meeting, the intended maker of the motion must file, in advance of the session, and within the published deadline, a Notice of Intent to Make a Motion. A Motions Committee appointed by the Standards Council then reviews all notices and certifies all amending motions that are proper. Only these Certified Amending Motions, together with certain allowable Follow-Up Motions (that is, motions that have become necessary as a result of previous successful amending motions) will be allowed at the Association Technical Meeting.

For more information on dates/locations of NFPA Technical Committee meetings and NFPA Annual Association Technical Meeting, check the NFPA Web site at: *http://www.nfpa.org/itemDetail.asp?categoryID=822&itemID=22818.*

The specific rules for the types of motions that can be made are who can make them are set forth in NFPA's Regulation Governing Committee Projects which should always be consulted by those wishing to bring an issue before the membership at an Association Technical Meeting.

Interested persons may submit proposals, supported by written data, views, or arguments, to Amy Beasley Cronin, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02169–7471. Proposals should be submitted on forms available from the NFPA Codes and Standards Administration Office, or from NFPA's Web site at *http://www.nfpa.org.*

Each person must include his or her name and address, identify the code or standard, and give reasons for the proposal. Proposals received by 5 p.m. EDT/EDST on or before the closing date indicated with each code or standard would be acted on by the respective Committee, and then considered by the NFPA Membership at the Association Technical Meeting.

Document—Edition	Document title	Proposal closing date
NFPA 17—2009	Standard for Dry Chemical Extinguishing Systems	5/23/2011
NFPA 17A—2009.	Standard for Wet Chemical Extinguishing Systems	5/23/2011
NFPA 20—2010	Standard for the Installation of Stationary Pumps for Fire Protection	11/23/2010
NFPA 36—2009	Standard for Solvent Extraction Plants	5/23/2011
NFPA 51—2007	Standard for the Design and Installation of Oxygen-Fuel Gas Systems for Welding, Cutting, and Allied Processes.	11/23/2010
NFPA 52—2010	Vehicular Gaseous Fuel Systems Code	5/23/2011
NFPA 55—2010	Compressed Gases and Cryogenic Fluids Code	11/23/2010
NFPA 61—2008	Standard for the Prevention of Fires and Dust Explosions in Agricultural and Food Processing Facilities	11/23/2010
NFPA 70B—2010.	Recommended Practice for Electrical Equipment Maintenance	5/23/2011
NFPA 72—2010	National Fire Alarm and Signaling Code	11/5/2010
NFPA 77—2007	Recommended Practice on Static Electricity	5/23/2011
NFPA 80—2010	Standard for Fire Doors and Other Opening Protectives	11/23/2010
NFPA 101A—2010.	Guide on Alternative Approaches to Life Safety	11/23/2010
NFPA 105—2010.	Standard for the Installation of Smoke Door Assemblies and Other Opening Protectives	11/23/2010
NFPA 110—2010.	Standard for Emergency and Standby Power Systems	11/23/2010
NFPA 111—2010.	Standard on Stored Electrical Energy Emergency and Standby Power Systems	11/23/2010
NFPA 130—2010.	Standard for Fixed Guideway Transit and Passenger Rail Systems	11/23/2010
NFPA 140—2008.	Standard on Motion Picture and Television Production Studio Soundstages, Approved Production Facilities, and Production Locations.	5/23/2011
NFPA 225—2009.	Model Manufactured Home Installation Standard	5/23/2011

Document—Edition	Document title	Proposal closing date
NFPA 259—2008.	Standard Test Method for Potential Heat of Building Materials	5/23/2011
NFPA 260—2009.	Standard Methods of Tests and Classification System for Cigarette Ignition Resistance of Components of Upholstered Furniture.	5/23/2011
NFPA 261—2009.	Standard Method of Test for Determining Resistance of Mock-Up Upholstered Furniture Material Assemblies to Ignition by Smoldering Cigarettes.	5/23/2011
NFPA 270—2008.	Standard Test Method for Measurement of Smoke Obscuration Using a Conical Radiant Source in a Single Closed Chamber.	5/23/2011
NFPA 274—2009.	Standard Test Method to Evaluate Fire Performance Characteristics of Pipe Insulation	5/23/2011
NFPA 289—2009.	Standard Method of Fire Test for Individual Fuel Packages	5/23/2011
NFPA 290—2009.	Standard for Fire Testing of Passive Protection Materials for Use on LP-Gas Containers	5/23/2011
NFPA 301—2008.	Code for Safety to Life from Fire on Merchant Vessels	11/23/2010
NFPA 400—2010.	Hazardous Materials Code	11/23/2010
NFPA 402—2008.	Guide for Aircraft Rescue and Fire-Fighting Operations	10/8/2010
NFPA 415—2008.	Standard on Airport Terminal Buildings, Fueling Ramp Drainage, and Loading Walkways	11/23/2010
NFPA 424—2008.	Guide for Airport/Community Emergency Planning	10/8/2010
NFPA 450—2009.	Guide for Emergency Medical Services and Systems	11/23/2010
NFPA 472—2008.	Standard for Competence of Responders to Hazardous Materials/Weapons of Mass Destruction Incidents	11/23/2010
NFPA 473—2008.	Standard for Competencies for EMS Personnel Responding to Hazardous Materials/Weapons of Mass Destruction Incidents.	11/23/2010
NFPA 495—2010.	Explosive Materials Code	5/23/2011
NFPA 496—2008.	Standard for Purged and Pressurized Enclosures for Electrical Equipment	5/23/2011
NFPA 498—2010.	Standard for Safe Havens and Interchange Lots for Vehicles Transporting Explosives	5/23/2011
NFPA 501A—2009.	Standard for Fire Safety Criteria for Manufactured Home Installations, Sites, and Communities	5/23/2011
NFPA 501—2010.	Standard on Manufactured Housing	5/23/2011
NFPA 555—2009.	Guide on Methods for Evaluating Potential for Room Flashover	11/23/2010
NFPA 705—2009.	Recommended Practice for a Field Flame Test for Textiles and Films	5/23/2011
NFPA 909—2010.	Code for the Protection of Cultural Resources Properties—Museums, Libraries, and Places of Worship	5/23/2011
NFPA 1001—2008.	Standard for Fire Fighter Professional Qualifications	11/23/2010
NFPA 1122—2008.	Code for Model Rocketry	11/23/2010
NFPA 1127—2008.	Code for High Power Rocketry	11/23/2010
NFPA 1144—2008.	Standard for Reducing Structure Ignition Hazards from Wildland Fire	11/23/2010
NFPA 1221—2010.	Standard for the Installation, Maintenance, and Use of Emergency Services Communications Systems	11/23/2010
NFPA 1404—2006.	Standard for Fire Service Respiratory Protection Training	5/23/2011
NFPA 1500—2007.	Standard on Fire Department Occupational Safety and Health Program	11/23/2010
NFPA 1582—2007.	Standard on Comprehensive Occupational Medical Program for Fire Departments	11/23/2010
NFPA 1851—2008.	Standard on Selection, Care, and Maintenance of Protective Ensembles for Structural Fire Fighting and Proximity Fire Fighting.	11/30/2010

* Proposed NEW document drafts are available from NFPA's Web site—*http://www.nfpa.org,* or may be obtained from NFPA's Codes and Standards Administration, 1 Batterymarch Park, Quincy, Massachusetts 02169–7471.

Dated: October 22, 2010.

Harry S. Hertz,

Director, Baldrige Performance Excellence Program.

[FR Doc. 2010–27434 Filed 10–28–10; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Orion Air, S.L. and Syrian Pearl Airlines: Orion Air, S.L., Canada Real de Merinas, 7 Edificio 5, 3′A, Eissenhower Business Center, 28042 Madrid, Spain; and Ad. de las Cortes Valencianas no 37, Esc. A Puerta 45 46015 Valencia, Spain; and Syrian Pearl Airlines, Damascus International Airport, Damascus, Syria, Respondents

Order Renewing Temporary Denial of Export Privileges

Pursuant to Section 766.24 of the Export Administration Regulations, 15 CFR Parts 730–774 (2010) ("EAR" or the "Regulations"), I hereby grant the request of the Bureau of Industry and Security ("BIS") to renew for 180 days the Order Temporarily Denying the Export Privileges of Respondents Orion Air, S.L. ("Orion Air") and Syrian Pearl Airlines (collectively, "Respondents"), as I find that renewal of the temporary denial order ("TDO" or the "Order") is necessary in the public interest to prevent an imminent violation of the EAR.

I. Procedural History

On May 7, 2009, then-Acting Assistant Secretary of Commerce for Export Enforcement Kevin Delli-Colli signed an Order Temporarily Denying the Export Privileges of the Respondents for 180 days on the grounds that its issuance was necessary in the public interest to prevent an imminent violation of the Regulations. Pursuant to Section 766.24(a), the TDO was issued *ex parte* and was effective upon issuance. Copies of the TDO were sent to each Respondent in accordance with Section 766.5 of the Regulations and the Order was published in the **Federal Register** on May 26, 2009.[1] Thereafter, on November 2, 2009, Acting Assistant Secretary Delli-Colli issued an Order renewing the TDO for an additional 180 days.[2]

On April 29, 2010, I renewed the TDO against the Respondents for an additional 180 days. That renewal was effective upon issuance and was published in the **Federal Register** on May 7, 2010.[3] The current Order would expire on October 26, 2010, unless renewed in accordance with Section 766.24 of the Regulations.

On October 5, 2010, BIS, through its Office of Export Enforcement ("OEE"), filed a written request for renewal of the TDO against the Respondents for an additional 180 days. A copy of this request was delivered to the Respondents in accordance with Section 766.5 of the Regulations. No opposition to renewal of the TDO has been received from either Orion Air or Syrian Pearl Airlines.

II. Discussion

A. Legal Standard

Pursuant to section 766.24(d)(3) of the EAR, the sole issue to be considered in determining whether to continue a TDO is whether the TDO should be renewed to prevent an imminent violation of the EAR, as "imminent" violation is defined in Section 766.24. "A violation may be 'imminent' either in time or in degree of likelihood." 15 CFR 766.24(b)(3). BIS may show "either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations." *Id.* As to the likelihood of future violations, BIS may show that "the violation under investigation or charges is significant, deliberate, covert and/or likely to occur again, rather than technical and negligent[.]" *Id.* A "lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation." *Id.*

B. Findings

As part of its initial TDO request, BIS presented evidence that on or about May 1, 2009, Orion Air re-exported a BAE 146–300 aircraft (tail number EC–JVO) to Syria, and specifically to Syrian Pearl Airlines, without the U.S. Government authorization required by General Order No. 2 of Supplement 1 to Part 736 of the EAR. The aircraft is subject to the Regulations because it contains greater than a 10-percent de minimis amount of U.S.-origin content. Orion Air engaged in this re-export transaction despite having been directly informed of the export licensing requirements by the U.S. Government. Moreover, Orion Air not only engaged in this conduct after having received actual as well as constructive notice of the applicable license requirements, but then sought to evade the Regulations and U.S. export controls by giving the U.S. Government false assurances that it would put the transaction on hold due to the U.S. Government's concerns.

BIS also produced evidence that the re-exported aircraft bore the livery, colors and logos of Syrian Pearl Airlines, a national of Syria, a Country Group E:1 destination; was flight capable; and under the terms of the lease agreement was to be based in and operated out of Syria during the lease term. The record also shows that the re-exported aircraft currently remains in Syria under the control of Syrian Pearl Airlines.

In addition to the unauthorized re-export described above, Acting Assistant Secretary Delli-Colli also concluded that additional violations were imminent based on statements by Orion Air to the U.S. Government in May 2009 that Orion Air planned to re-export an additional BAE 146–300 aircraft (tail number EC–JVJ) to Syria, and specifically to Syrian Pearl Airlines. This second aircraft was at the time undergoing maintenance in the United Kingdom, and remains located there. Moreover, the agreement between Orion Air and Syrian Pearl Airlines involved both aircraft being re-exported to Syria for Syrian Pearl Airlines' use and benefit.

Based on my review of the record, I find that the facts and circumstances that led to the issuance of the initial TDO and subsequent renewal Orders continue to show that renewal of the TDO for an additional 180 days is necessary and in the public interest to prevent an imminent violation of the EAR. Absent renewal of the TDO, there remains a substantial continued risk that the second aircraft will be re-exported contrary to the Regulations, given that, *inter alia,* Orion Air acted with actual knowledge and took deceptive and evasive action. This finding alone would justify renewal. Additionally, there remains a substantial risk that, absent renewal of the TDO, the first aircraft, which remains in Syria, would be operated or disposed of in violation of the Regulations. Furthermore, renewal of the TDO is needed to give notice to persons and companies in the United

[1] 74 FR 24,786.

[2] The November 2, 2009 renewal Order was effective immediately and was published in the **Federal Register** on November 9, 2009 (74 FR 57,626).

[3] 75 FR 25,202.

States and abroad that they should cease dealing with the Respondents in export transactions involving items subject to the EAR.

It is therefore ordered:

First, that, Orion Air, S.L., Canada Real de Merinas, 7 Edificio 5, 3'A, Eissenhower business center, 28042 Madrid, Spain, and Ad. de las Cortes Valencianas no 37, Esc.A Puerta 4546015 Valencia, Spain, and when acting for or on its behalf, any of its successors, assigns, agents, or employees; and Syrian Pearl Airlines, Damascus International Airport, Damascus, Syria, and when acting on its behalf, any of its successors, assigns, agents, or employees (each a "Denied Person" and collectively the "Denied Persons") may not, directly or indirectly, participate 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 Export Administration Regulations ("EAR"), or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying 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 EAR, or in any other activity subject to the EAR; 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 EAR, or in any other activity subject to the EAR.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or re-export to or on behalf of any Denied Person any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by any Denied Person of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby any 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 any Denied Person of any item subject to the EAR that has been exported from the United States;

D. Obtain from any Denied Person in the United States any item subject to the EAR 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 EAR that has been or will be exported from the United States and which is owned, possessed or controlled by any Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by any Denied Person if such service involves the use of any item subject to the EAR 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 EAR, any other person, firm, corporation, or business organization related to any of the Respondents 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, re-export, or other transaction subject to the EAR where the only items involved that are subject to the EAR are the foreign-produced direct product of U.S.-origin technology.

In accordance with the provisions of Section 766.24(e) of the EAR, the Respondents may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

BIS may seek renewal of this Order by filing a written request with the Assistant Secretary of Commerce for Export Enforcement in accordance with the provisions of Section 766.24(d) of the Regulations, which currently provides that such a written renewal request must be submitted not later than 20 days before the expiration date. The Respondents may oppose a request to renew this Order by doing so in accordance with Section 766.24(d), including filing a written submission with the Assistant Secretary for Export Enforcement, supported by appropriate evidence. Any opposition ordinarily must be received not later than seven days before the expiration date of the Order.

Notice of the issuance of this Order shall be given to Respondents in accordance with Sections 766.5(b). This Order also shall be published in the **Federal Register**.

This Order is effective upon issuance and shall remain in effect for 180 days.

Issued this 22nd day of October 2010.

David W. Mills,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2010–27351 Filed 10–28–10; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* October 29, 2010.

SUMMARY: The Department of Commerce (the Department) is currently conducting two new shipper reviews (NSRs) of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (PRC) [1] covering the period of review (POR) February 1, 2009, through January 31, 2010. We preliminarily determine that the sales made by Shandong Fengyu Edible Fungus Co., Ltd. (Fengyu) and by Zhangzhou Tongfa Foods Industry Co., Ltd. (Tongfa), were not made below normal value (NV). If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to liquidate entries of merchandise exported by Fengyu and Tongfa during the POR without regard to antidumping duties.

FOR FURTHER INFORMATION CONTACT: Fred Baker, Scott Hoefke, or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2924, (202) 482–4947 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 26, 2010, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (the "Act"), and 19 CFR 351.214(c), the Department received NSR requests from Fengyu and Tongfa. The Department determined

[1] *See Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Preserved Mushrooms From the People's Republic of China,* 64 FR 8308 (February 19, 1999), (the "Order").

that both of these requests had not been properly filed due to bracketing issues, and therefore returned them on March 19, 2008. On March 23, 2010, both companies resubmitted their requests. They both certified that they are the producers and exporters of the subject merchandise upon which the requests were based.

On March 31, 2010, the Department initiated antidumping duty NSRs on certain preserved mushrooms from the PRC covering the two companies. *See Certain Preserved Mushrooms from the People's Republic of China: Notice of Initiation of Antidumping Duty New Shipper Reviews,* 75 FR 16075 (March 31, 2010) (*Initiation Notice*).

On April 5, 2010, the Department issued its standard antidumping questionnaire to both Fengyu and Tongfa. Between April 2010 and June 2010, Fengyu and Tongfa submitted responses to the original sections A, C, and D questionnaires and supplemental sections A, C, and D questionnaires.

On July 13, 2010, the Department sent interested parties a letter requesting comments on surrogate country selection and information pertaining to valuing factors of production (FOP) in a surrogate market economy country. No party submitted surrogate country or surrogate value data.

Scope of the Order

The products covered by this order are certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The certain preserved mushrooms covered under this order are the species *Agaricus bisporus* and *Agaricus bitorquis.* "Certain Preserved Mushrooms" refers to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including, but not limited to, cans or glass jars in a suitable liquid medium, including, but not limited to, water, brine, butter or butter sauce. Certain preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are "brined" mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.[2]

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including "refrigerated" or "quick blanched mushrooms;" (3) dried mushrooms; (4) frozen mushrooms; and (5) "marinated," "acidified," or "pickled" mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

The merchandise subject to this order is classifiable under subheadings: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153, and 0711.51.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of this order is dispositive.

Non-Market Economy Country Status

In every case conducted by the Department involving the PRC, we have treated the PRC as a non-market economy (NME) country. *See, e.g., Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 73 FR 76336 (December 16, 2008); and *Frontseating Service Valves from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances,* 74 FR 10886 (March 12, 2009). In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See, e.g., Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review,* 71 FR 66304 (November 14, 2006). None of the parties to this proceeding have contested such treatment. Accordingly, we calculated normal value (NV) in accordance with section 773(c) of the Act, which applies to NME countries.

Separate Rates Determination

A designation of a country as an NME remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Act. Accordingly, there is a rebuttable presumption that all companies within the PRC are subject to government control, and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in the *Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), (*Sparklers*) as amplified by the *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).

Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *See Sparklers,* 56 FR at 20589. In this NSR, Fengyu and Tongfa submitted complete responses to the separate rates section of the Department's questionnaire. The evidence submitted by Fengyu and Tongfa includes government laws and regulations on corporate ownership and control (*i.e.,* the Company Law and the Foreign Trade Law of the People's Republic of China), these companies' individual business licenses, and narrative information regarding the companies' operations and selection of management. The evidence provided by Fengyu and Tongfa supports a preliminary finding of a *de jure* absence of government control over its export activities based on the record: (1) There are no controls on exports of subject merchandise, such as quotas applied to, or licenses required for, exports of the subject merchandise to the United States; (2) the government of the PRC has passed legislation decentralizing control of companies; and (3) there are other formal measures by the government decentralizing control of companies. *See* Fengyu's March 23, 2010, submission at appendix 2 and April 30, 2010, submission at 3 and Tongfa's March 18, 2010, submission at appendix 1 and April 30, 2010, submission at 3.

[2] On June 19, 2000, the Department affirmed that "marinated," "acidified," or "pickled" mushrooms containing less than 0.5 percent acetic acid are within the scope of the antidumping duty order. *See* Recommendation Memorandum-Final Ruling of Request by Tak Fat, *et al.* for Exclusion of Certain Marinated, Acidified Mushrooms from the Scope of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China," dated June 19, 2000. On February 9, 2005, the United States Court of Appeals for the Federal Circuit upheld this decision. *See Tak Fat* v. *United States,* 396 F.3d 1378 (Fed. Cir. 2005).

Absence of De Facto Control

The absence of *de facto* government control over exports is based on whether the company: (1) Sets its own export prices independent of the government and without the approval of a government authority; (2) retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) has the authority to negotiate and sign contracts and other agreements; (4) has autonomy from the government regarding the selection of management; and (5). *See Silicon Carbide,* 59 FR at 22587; *Sparklers,* 56 FR at 20589; and *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995).

In its April 30, 2010, submission, Fengyu submitted evidence demonstrating an absence of *de facto* government control over its export activities. Specifically, this evidence indicates that: (1) The company sets its own export prices independent of the government and without the approval of a government authority; (2) the company retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) the company has a general manager with the authority to negotiate and bind the company in an agreement;
(4) the general manager is selected by the owner; (5) the general manager appoints the manager of each department; and (6) there are no restrictions on the company's use of export revenues. Therefore, we preliminarily find that Fengyu has established that it qualifies for a separate rate under the criteria established by *Silicon Carbide* and *Sparklers.*

Similarly, in its April 30, 2010, submission, Tongfa also submitted evidence demonstrating an absence of *de facto* government control over its export activities. Specifically, this evidence indicates that: (1) The company sets its own export prices independent of the government and without the approval of a government authority; (2) the company retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) the company has a general manager with authority to negotiate and bind the company in an agreement; (4) company's board of directors appoints the general manager, who appoints the senior managers; and (5) there are no restrictions on the company's use of export revenues. Therefore, we preliminarily find that Tongfa has established that it qualifies for a separate rate under the criteria established by *Silicon Carbide* and *Sparklers.*

Bona Fide Analysis

Consistent with the Department's practice, we investigated the *bona fide* nature of the sales made by Fengyu and Tongfa for these NSRs. In evaluating whether a single sale in a NSR is commercially reasonable, and therefore bona fide, the Department considers, *inter alia,* such factors as: (1) Timing of the sales; (2) price and quantity; (3) the expenses arising from the transaction; (4) whether the goods were sold at a profit; and (5) whether the transaction was made on an arms-length basis. *See Tianjin Tiancheng Pharmaceutical Co.* v. *the United States,* 366 F. Supp. 2d 1246, 1250 (CIT 2005). Accordingly, the Department considers a number of factors in its bona fide analysis, "all of which may be specific to the commercial realities surrounding an alleged sale of subject merchandise." *See Hebei New Donghua Amino Acid Co.* v. *the United States,* 374 F. Supp. 2d 1333, 1342 (CIT 2005). In examining Tongfa's sales in relation to these factors, the Department observed no evidence that would indicate that this sale was not *bona fide.* With respect to Fengyu, there remain some unresolved discrepancies regarding the Customs Form 7501 that it submitted to the record. We will continue to investigate these discrepancies and issue a final *bona fides* determination along with the final results of this review. Nevertheless, for purposes of these preliminary results, we find the new shipper sales by Tongfa and Fengyu were made on a *bona fide* basis. *See* Memorandum to Richard Weible through Robert James, Program Manager, Important Administration from Scott Hoefke, International Trade Compliance Analyst, Import Administration: *Bona Fide* Sales Analysis of Shangdong Fengyu Edible Fungus Co., Ltd. (Fengyu) in the Antidumping Duty New Shipper Review of Certain Preserved Mushrooms from the People's Republic of China, dated September 22, 2010; and Memorandum to Richard Weible through Robert James, Program Manager, Important Administration from Fred Baker, International Trade Compliance Analyst, Import Administration: *Bona Fide* Sales Analysis of Zhangzhou Tongfa Foods Industry Co., Ltd. (Tongfa) in the Antidumping Duty New Shipper Review of Certain Preserved Mushrooms from the People's Republic of China, dated September 22, 2010.

Based on our investigation into the *bona fide* nature of the sales and the questionnaire responses submitted by Fengyu and Tongfa, as well as the companies' eligibility for separate rates (*see* "Separate Rates Determination" section (above)), we preliminarily determine that Fengyu and Tongfa have met the requirements to qualify as new shippers during this POR. Therefore, for purposes of these preliminary results of review, we are treating Fengyu's and Tongfa's sales of subject merchandise to the United States as appropriate transactions for these NSRs.[3]

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production (FOPs), valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market economy countries that are: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.

The Department determined that India, Philippines, Indonesia, Thailand, Ukraine, and Peru are countries comparable to the PRC in terms of economic development.[4] Moreover, it is the Department's practice to select an appropriate surrogate country based on the availability and reliability of data from the countries. *See* Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Surrogate Country Policy Bulletin). In the most recently completed proceeding

[3] For more detailed discussion of this issue, please *see* Memoranda to Richard Weible, Office Director, "*Bona Fide* Sales Analysis for Shandong Fengyu Edible Fungus Co., Ltd." and "*Bona Fide* Sales Analysis for Zhangzhou Tongfa Foods Industry Co., Ltd." both dated September 22, 2010.

[4] *See* Memorandum from Carole Showers, Acting Director, Office of Policy, to Richard Weible, Director, Office 7; Subject: Request for a List of Surrogate Countries for a 2010 New Shipper Review of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China, dated June 25, 2010. The Department notes that these six countries are part of a non-exhaustive list of countries that are at a level of economic development comparable to the PRC. *See* the Department's letter to "All Interested Parties; First Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Deadlines for Surrogate Country and Surrogate Value Comments," dated March 25, 2010 at 1 and Attachment I ("*Surrogate Country List*").

involving the Order, we determined that India is comparable to the PRC in terms of economic development and has surrogate value data that are available and reliable. *See Certain Preserved Mushrooms From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review,* 74 FR 65520, (December 10, 2009). In the current proceeding, we received no comments regarding surrogate country selection. Since no information has been provided in these NSRs indicating that the Department should deviate from its selection of India in the most recently completed administrative review of the Order, we continue to find that India is the appropriate surrogate country. Specifically, we have selected India because it is at a level of economic development similar to the PRC, it is a significant producer of comparable merchandise, and we have reliable, publicly available data from India representing broad-market average. *See* 773(c)(4) of the Act; *See also* Memorandum to the File, through Richard Weible, Office Director, and Robert James, Program Manager, from Fred Baker, Analyst, Subject: Antidumping Duty New Shipper Review of Certain Preserved Mushrooms from the People's Republic of China: Selection of a Surrogate Country, dated September 22, 2010.

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results in a NSR, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results.

U.S. Price

In accordance with section 772(a) of the Act, we based Fengyu's and Tongfa's U.S. prices on export prices (EP), because their first sales to an unaffiliated purchaser were made before the date of importation and the use of constructed export price was not otherwise warranted by the facts on the record. As appropriate, we deducted foreign inland freight and foreign brokerage and handling from the starting price (or gross unit price), in accordance with section 772(c)(2) of the Act. These services were provided by NME vendors for both Fengyu's and Tongfa's U.S. sales. Therefore, we based the deduction of these movement charges on surrogate values.

For both Fengyu and Tongfa, we valued foreign inland freight (which consisted of truck freight) using a per-unit, period of review wide, average rate calculated from Indian data on the following Web site: *http://www.infobanc.com/logistics/logtruck.htm.* The logistics section of this Web site contains inland freight truck rates between many large Indian cities. *See* Memoranda to the File, "New Shipper Review of Certain Preserved Mushroom from the People's Republic of China: Surrogate Values for the Preliminary Results" (Fengyu Surrogate Values Memorandum) at Exhibit 7, and "New Shipper Review of Certain Preserved Mushroom from the People's Republic of China: Surrogate Values for the Preliminary Results" (Tongfa Surrogate Values Memorandum) at Exhibit 7.

We valued foreign brokerage and handling using the publicly summarized brokerage and handling expense reported in the U.S. sales listing of Indian mushroom producer, Agro Dutch Industries, Ltd. (Agro Dutch), in the 2004–2005 administrative review of Certain Preserved Mushrooms from India, which we then inflated to be contemporaneous with the POR. *See* Fengyu Surrogate Values Memorandum at Exhibit 8; and Tongfa Surrogate Values Memorandum at Exhibit 8.

In their section A responses, both Fengyu and Tongfa stated that they intended to use the invoice date as the date of sale, stating that this was the date that best represented when the terms of sale are fixed. *See* Fengyu's April 30, 2010, submission at 12; and Tongfa's April 30, 2010, submission at 12–13. However, both Fengyu and Tongfa in their supplemental questionnaire submissions stated that they had no instances of quantity or price changes after the receipt of purchase order. *See* Fengyu's June 30, 2010, submission at 3; and Tongfa's June 30, 2010, submission at 2. Therefore, we used the contract date as the date of sale for both Fengyu and Tongfa because there were no changes to either the prices or quantities of either companies' sales after this date, and there is no record evidence that the material terms of sale changed in anyway following the contract date for any of Fengyu's and Tongfa's other sales during the POR. The Department concludes that the contract date is therefore the date that best represents when Fengyu and Tongfa established the material terms of sale. *See* 19 CFR 351.401(i).

1. Methodology

Section 773(c)(1)(B) of the Act provides that the Department shall determine the NV using an FOP methodology if the merchandise under review is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies. *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part,* 70 FR 39744 (July 11, 2005), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2003–2004 Administrative Review and Partial Rescission of Review,* 71 FR 2517 (January 17, 2006).

In past cases, it has been the Department's practice to value various FOPs using import statistics of the primary selected surrogate country from World Trade Atlas (WTA), as published by Global Trade Information Services (GTIS). *See Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review,* 74 FR 50946, 50950 (October 2, 2009). However, in October 2009, the Department learned that the data reported in the Global Trade Atlas (GTA) software, published by GTIS, is reported to the nearest digit and thus there is not a loss of data by rounding, as there is with the data reported by the WTA software. Consequently, the Department will now obtain import statistics from GTA for valuing various FOPs.

2. Selection of Surrogate Values

In selecting the "best available information for surrogate values," *see* Section 773(c)(1) of the Act, consistent with the Department's practice, we considered whether the information was: Publicly available; product-specific; representative of broad market average prices; contemporaneous with the POR; and free of taxes. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam,* 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam,* 69 FR 71005 (December 8, 2004). Where we could obtain only surrogate values that were not contemporaneous with the POR consistent with our practice, we

inflated the surrogate values using, where appropriate, the Indian WPI as published in *International Financial Statistics* by the International Monetary Fund. *See e.g., Certain Preserved Mushrooms From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review,* 74 FR 65520 (December 10, 2009). *See* Fengyu Surrogate Values Memorandum at Exhibit 2 and Tongfa Surrogate Values Memorandum at Exhibit 2.

In accordance with the legislative history of the Omnibus Trade and Competitiveness Act of 1988, *see* Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) (OTCA 1988) at 590, the Department continues to apply its long-standing practice of disregarding surrogate values if it has a reason to believe or suspect the source data may be subsidized. In this regard, the Department has previously found that it is appropriate to disregard such prices from Indonesia, South Korea and Thailand because we have determined that these countries maintain broadly available, non-industry specific export subsidies. Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, the Department finds that it is reasonable to infer that all exporters from Indonesia, South Korea and Thailand may have benefitted from these subsidies.[5] Additionally, we disregarded prices from NME countries. Finally, imports that were labeled as originating from an "unspecified" country were excluded from the average value, because the Department could not be certain that they were not from either an NME country or a country with general export subsidies. *See Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China: Notice of Preliminary Results of the New Shipper Review,* 75 FR 47270 (August 5, 2010) and *Drill Pipe From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, and Postponement of Final Determination,* 75 FR 51004 (August 18, 2010).

In accordance with section 773(c) of the Act, we calculated NV by adding the value of the FOPs, general expenses, profit, and packing costs reported by Fengyu and Tongfa. The FOPs for subject merchandise include: (1) Quantities of raw materials employed; (2) hours of labor required; (3) amounts of energy and other utilities consumed; (4) representative capital and selling costs; and (5) packing materials. We used the FOPs reported by Fengyu and Tongfa for materials, energy, labor, and packing, and valued those FOPs by multiplying the amount of the factor consumed in producing subject merchandise by the average unit surrogate value of the factor derived from the Indian surrogate values selected for their NSRs.

To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available Indian surrogate values. As appropriate we added freight costs to the surrogate values that we calculated for Fengyu's and Tongfa's material inputs to make these prices delivered prices. We calculated these freight costs by multiplying surrogate freight rates by the shorter of the reported distance from the domestic supplier to the factory that produced the subject merchandise or the distance from the nearest seaport to the factory that produced the subject merchandise, as appropriate. Where there were multiple domestic suppliers of a material input, we calculated a weighted-average distance after limiting each supplier's distance to no more than the distance from the nearest seaport to Fengyu and Tongfa. This adjustment is in accordance with the decision by the Court of Appeals for the Federal Circuit in *Sigma Corp.* v. *United States,* 117 F.3d 1401, 1407–1408 (Fed. Cir. 1997). We increased the calculated costs of the FOPs for surrogate general expenses and profit. *See* Fengyu Surrogate Values Memorandum at Exhibit 9 and Tongfa Surrogate Values Memorandum at Exhibit 9.

Indian surrogate values were denominated in Rupees and were converted to USD using the applicable average exchange rate based on exchange rate data from the Department's Web site. For further details regarding the surrogate values used for these preliminary results, *see* Fengyu's Surrogate Value Memo and Tongfa's Surrogate Value Memo.

On May 14, 2010, the Court of Appeals for the Federal Circuit ("CAFC") in *Dorbest Ltd.* v. *United States,* 604 F.3d 1363, 1372 (CAFC 2010) ("*Dorbest IV*"), found that the "{regression-based} method for calculating wage rates {as stipulated by 19 CFR 351.408(c)(3)} uses data not permitted by {the statutory requirements laid out in section 773 of the Act (*i.e.,* 19 U.S.C. 1677b(c))}." The Department is continuing to evaluate options for determining labor values in light of the recent CAFC decision. However, for these preliminary results, we have calculated an hourly wage rate to use in valuing respondents' reported labor input by averaging industry-specific earnings and/or wages in countries that are economically comparable to the PRC and that are significant producers of comparable merchandise.

For the preliminary results of this administrative review, the Department is valuing labor using a simple average industry-specific wage rate using earnings or wage data reported under Chapter 5B by the International Labor Organization ("ILO"). To achieve an industry-specific labor value, we relied on industry-specific labor data from the countries we determined to be both economically comparable to the PRC, and significant producers of comparable merchandise. A full description of the industry-specific wage rate calculation methodology is provided in the *Prelim Surrogate Value Memo.* The Department calculated a simple average industry-specific wage rate of $1.36 for these preliminary results. Specifically, for this review, the Department has calculated the wage rate using a simple average of the data provided to the ILO under Sub-Classification 15 of the ISIC-Revision 3 standard by countries determined to be both economically comparable to the PRC and significant producers of comparable merchandise. The Department finds the two-digit description under ISIC-Revision 3 ("Manufacture of Food Products and Beverages") to be the best available wage rate surrogate value on the record because it is specific and derived from industries that produce merchandise comparable to the subject merchandise. Consequently, we averaged the ILO industry-specific wage rate data or earnings data available from the following countries found to be economically comparable to the PRC and are significant producers of comparable merchandise: Ecuador, Egypt, Indonesia, Jordan, Peru, Philippines, Thailand, and Ukraine. For further information on the calculation of the wage rate, *see Prelim Surrogate Values Memo.*

Preliminary Results of the Review

The Department has determined that the following preliminary dumping

[5] *See, e.g., Expedited Sunset Review of the Countervailing Duty Order on Certain Cut-to-Length Carbon Quality Steel Plate from Indonesia,* 70 FR 45692 (August 8, 2005) and accompanying Issues and Decision Memorandum at page 4; *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review,* 74 FR 2512 (January 15, 2009) and accompanying Issues and Decision Memorandum at Comment 1, pages 17, 19–20; and *Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Final Results of Countervailing Duty Determination,* 66 FR 50410 (October 3, 2001) and accompanying Issues and Decision Memorandum at Comment 1.

margins exist for the period February 1, 2009 through January 31, 2010:

CERTAIN PRESERVED MUSHROOMS FROM THE PRC

Manufacturer/exporter	Weighted-average margin (percent)
Fengyu	0.00
Tongfa	0.00

Public Comment

The Department will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary results. *See* 19 CFR 351.224(b). Interested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs) within five days after the time limit for filing case briefs. *See* 19 CFR 351.309(c)(1)(ii) and 351.309(d)(1). Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs must be limited to issues raised in the case briefs. Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with a diskette containing the public version of those comments.

Any interested party may request a hearing within 30 days of publication of this notice. *See* 19 CFR 351.310(c). Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration within 30 days of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c). Issues raised in the hearing will be limited to those raised in the briefs.

Unless the deadline is extended pursuant to section 751(a)(2)(B)(iv) of the Act, the Department will issue the final results of these NSRs, including the results of our analysis of the issues raised by the parties in their comments, within 90 days after issuance of these preliminary results.

Deadline for Submission of Publicly Available Surrogate Value Information

In accordance with 19 CFR 351.301(c)(3), the deadline for submission of publicly available information to value factors of production under 19 CFR 351.408(c) is 20 days after the date of publication of the preliminary determination. In accordance with 19 CFR 351.301(c)(1), if an interested party submits factual information less than ten days before, on, or after (if the Department has extended the deadline) the applicable deadline for submission of such factual information, an interested party has ten days to submit factual information to rebut, clarify, or correct the factual information no later than ten days after such factual information is served on the interested party. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. *See, e.g., Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part,* 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum at Comment 2. Furthermore, the Department generally will not accept business proprietary information in either the surrogate value submissions or the rebuttals thereto, as the regulation regarding the submission of surrogate values allows only for the submission of publicly available information.

Assessment Rates

Upon issuing the final results of the review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis.* However, the final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of these reviews and for future deposits of estimated duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements, when imposed, will be effective upon publication of the final results of these NSRs for all shipments of subject merchandise exported by Fengyu or Tongfa and entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For subject merchandise manufactured and exported by Fengyu or manufactured and exported by Tongfa, the cash-deposit rate will be that established in the final results of this review; (2) for subject merchandise exported by Fengyu or Tongfa but not manufactured by Fengyu or Tongfa, respectively, the cash deposit rate will continue to be the PRC-wide rate (*i.e.,* 198.63 percent); and (3) for subject merchandise manufactured by Fengyu or Tongfa, but exported by any other party, the cash deposit rate will be the rate applicable to the exporter. If the cash deposit rates calculated for Fengyu or Tongfa in the final results is zero or *de minimis:,* a zero cash deposit will be required for entries of subject merchandise both produced and exported by Fengyu or Tongfa. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These NSRs and notice are in accordance with sections 751(a)(2)(B) and 777(i) of the Act and 19 CFR 351.214(i).

Dated: October 22, 2010.

Ronald Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–27427 Filed 10–28–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 101006483–0483–02]

Proposed Voluntary Product Standard PS 2–10, Structural Plywood

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The National Institute of Standards and Technology (NIST) is soliciting public comment on a proposed revision to Voluntary Product Standard (PS) 2–04, Performance Standard for Wood-Based Structural-Use Panels. This revised standard, PS 2–10, was prepared by the Standing Committee for PS 2 and establishes requirements, for those who choose to adhere to the standard, for the structural criteria to assess the acceptability of wood-based structural-use panels for construction sheathing and single-floor applications. It also provides a basis for common understanding among the producers, distributors, and the users of these products. Interested parties are invited to review the proposed standard and submit comments to NIST.

DATES: Written comments regarding the proposed revision, should be submitted to the Standards Services Division, NIST, no later than November 29, 2010.

ADDRESSES: An electronic copy (an Adobe Acrobat File) of the proposed standard, PS 2–10, can be obtained at the following Web site: *http://gsi.nist.gov/global/index.cfm/L1-5/l2-44/A-355.* This site also includes an electronic copy of PS 2–04 (the existing standard) and a summary of significant changes. Written comments on the proposed revision should be submitted to David F. Alderman, Standards Services Division, NIST, 100 Bureau Drive, Stop 2150, Gaithersburg, MD 20899–2150. Electronic comments may be submitted to *david.alderman@nist.gov.*

FOR FURTHER INFORMATION CONTACT: David F. Alderman, Standards Services Division, National Institute of Standards and Technology, telephone (301) 975–4019; fax: (301) 975–4715, e-mail: *david.alderman@nist.gov.*

SUPPLEMENTARY INFORMATION: Proposed Voluntary Product Standard PS 2–10 establishes structural criteria for assessing the acceptability of wood-based structural-use panels for construction sheathing and single-floor application, and provides a basis for common understanding among the producers, distributors, and the users of these products. After conducting a review of the current standard, PS 2–04, the Standing Committee for PS 2 determined that updates were needed to reflect current industry practices, and developed this proposal through meetings to review the standard and propose needed changes. The proposed standard does not address non-structural issues such as resistance to biological agents. Applications for structural plywood other than construction sheathing and single-floor sheathing may require additional engineering considerations that are not covered by this document.

The proposed revision of the standard has been developed and is being processed in accordance with Department of Commerce provisions in Title 15 of the U.S. Code of Federal Regulations, part 10, *Procedures for the Development of Voluntary Product Standards,* as amended (published June 20, 1986). The Standing Committee for PS 2 is responsible for maintaining, revising, and interpreting the standard, and is comprised of producers, distributors, users, and others with an interest in the standard. Committee members voted on the revision, which was approved unanimously. The Committee then submitted a report to NIST along with the voting results and the draft revised standard. NIST has determined that the revised standard should be issued for public comment.

The revision includes the following changes:

- *Panel thickness:* In order to resolve the inconsistency with NIST standards used by "weights and measures" regulators, PS 2 will require labeling with both a "Performance Category," which is a fractional label such as 15/32, and a decimal thickness declaration, such as "THICKNESS 0.438 IN." The Performance Category will maintain consistency with the panel thickness specifications required in the U.S. model codes. The Performance Category panel labeling will permit the abbreviations "PERF CAT," "CAT" or "Category." The decimal thickness declaration will help assure that panels are compliant with weights and measures regulations.
- Two nonmandatory appendices were added to provide guidance on NIST Handbook 130 "Packaging and Labeling Regulations," and to provide suggested thickness labeling.
- Nonmandatory appendices on attributes related to Green Building and Formaldehyde were added.
- A nonmandatory appendix on the history of PS 2 was added.
- The moisture content specifications for the "dry," "wet/redry" and "wet" test conditions were clarified in various sections of the standard.
- The tables containing performance requirements were modified to provide clarity and references to the sections of the standard that provide the test methods and pass/fail criteria used during the qualification process.
- The original fastener holding requirements for sheathing were based on thin plywood panels made with Group 4 species. Those panels are not representative of current sheathing panels. In addition, some U.S. model code requirements for wall sheathing were made more stringent, such that the existing nail holding requirements may not justify certain wind load conditions. Therefore, a test program to characterize the nail holding properties of current production was conducted by two testing agencies. Based on those test results, some requirements for nail holding performance of sheathing were increased.

All public comments will be reviewed and considered. The Standing Committee for PS 2 and NIST will revise the standard accordingly.

Dated: October 22, 2010.

Harry S. Hertz,

Director, Baldrige Performance Excellence Program.

[FR Doc. 2010–27433 Filed 10–28–10; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Fire Protection Association (NFPA): Request for Comments on NFPA's Codes and Standards

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: Since 1896, the National Fire Protection Association (NFPA) has accomplished its mission by advocating scientifically based consensus codes and standards, research, and education for safety related issues. NFPA's *National Fire Codes®*, which holds over 290 documents, are administered by more than 238 Technical Committees comprised of approximately 7,200 volunteers and are adopted and used throughout the world. NFPA is a nonprofit membership organization with approximately 80,000 members from over 70 nations, all working together to fulfill the Association's mission.

The NFPA process provides ample opportunity for public participation in the development of its codes and standards. All NFPA codes and standards are revised and updated every three to five years in Revision Cycles that begin twice each year and take approximately two years to complete. Each Revision Cycle proceeds according to a published schedule that includes final dates for all major events in the process. The process contains five basic

steps that are followed both for developing new documents as well as revising existing documents. These steps are: Calling for Proposals; Publishing the Proposals in the Report on Proposals; Calling for Comments on the Committee's disposition of the Proposals and these Comments are published in the Report on Comments; having a Technical Report Session at the NFPA Conference and Expo; and finally, the Standards Council Consideration and Issuance of documents.

Note: Anyone wishing to make Amending Motions on the Technical Committee Reports (ROP and ROC) must signal his or her intention by submitting a Notice of Intent to Make a Motion by the Deadline of 5 p.m. EST/EDST on or before October 21, 2011. Certified motions will be posted by November 18, 2011. Documents that receive notice of proper Amending Motions (Certified Amending Motions) will be presented for action at the annual June 2012 Association Technical Meeting. Documents that receive no motions will be forwarded directly to the Standards Council for action on issuance.

For more information on these new rules and for up-to-date information on schedules and deadlines for processing NFPA Documents, check the NFPA Web site at *http://www.nfpa.org,* or contact the NFPA Codes and Standards Administration.

The purpose of this notice is to request comments on the technical reports that will be published in the NFPA's 2011 Fall Revision Cycle. The publication of this notice by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: Thirty-nine reports are published in the 2011 Fall Revision Cycle Report on Proposals and will be available on December 22, 2010. Comments received by 5 p.m. EST/EDST on March 4, 2011 will be considered by the respective NFPA Committees before final action is taken on the proposals.

ADDRESSES: The 2011 Fall Revision Cycle Report on Proposals is available and downloadable from NFPA's Web site—*http://www/nfpa.org* or by requesting a copy from the NFPA, Fulfillment Center, 11 Tracy Drive, Avon, Massachusetts 02322. Comments on the report should be submitted to Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02169–7471.

FOR FURTHER INFORMATION CONTACT: Amy Beasley Cronin, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02169–7471, (617) 770–3000.

SUPPLEMENTARY INFORMATION:

Background

The National Fire Protection Association (NFPA) develops building, fire, and electrical safety codes and standards. Federal agencies frequently use these codes and standards as the basis for developing Federal regulations concerning safety. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR part 51.

Request for Comments

Interested persons may participate in these revisions by submitting written data, views, or arguments to Amy Beasley Cronin, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02169–7471. Commenters may use the forms provided for comments in the Reports on Proposals. Each person submitting a comment should include his or her name and address, identify the notice, and give reasons for any recommendations. Comments received by 5 p.m. EST/EDST on March 4, 2011 for the 2011 Fall Revision Cycle Report on Proposals will be considered by the NFPA before final action is taken on the proposals.

Copies of all written comments received and the disposition of those comments by the NFPA committees will be published as the 2011 Fall Revision Cycle Report on Comments by August 26, 2011. A copy of the Report on Comments will be sent automatically to each commenter.

2011 Fall Revision Cycle Report on Proposals

NFPA 59A	Standard for the Production, Storage, and Handling of Liquefied Natural Gas (LNG)	P
NFPA 75	Standard for the Protection of Information Technology Equipment	P
NFPA 76	Standard for the Fire Protection of Telecommunications Facilities	P
NFPA 115	Standard for Laser Fire Protection	P
NFPA 150	Standard on Fire and Life Safety in Animal Housing Facilities	P
NFPA 170	Standard for Fire Safety and Emergency Symbols	P
NFPA 252	Standard Methods of Fire Tests of Door Assemblies	P
NFPA 257	Standard on Fire Test for Window and Glass Block Assemblies	P
NFPA 268	Standard Test Method for Determining Ignitibility of Exterior Wall Assemblies Using a Radiant Heat Energy Source.	P
NFPA 269	Standard Test Method for Developing Toxic Potency Data for Use in Fire Hazard Modeling	P
NFPA 271	Standard Method of Test for Heat and Visible Smoke Release Rates for Materials and Products Using an Oxygen Consumption Calorimeter.	P
NFPA 275	Standard Method of Fire Tests for the Evaluation of Thermal Barriers Used Over Foam Plastic Insulation.	P
NFPA 285	Standard Fire Test Method for Evaluation of Fire Propagation Characteristics of Exterior Non-Load-Bearing Wall Assemblies Containing Combustible Components.	P
NFPA 287	Standard Test Methods for Measurement of Flammability of Materials In Cleanrooms Using a Fire Propagation Apparatus (FPA).	P
NFPA 288	Standard Methods of Fire Tests of Floor Fire Door Assemblies Installed Horizontally in Fire Resistance-Rated Floor Systems.	P
NFPA 385	Standard for Tank Vehicles for Flammable and Combustible Liquids	P
NFPA 497	Recommended Practice for the Classification of Flammable Liquids, Gases, or Vapors and of Hazardous (Classified) Locations for Electrical Installations in Chemical Process Areas.	P
NFPA 499	Recommended Practice for the Classification of Combustible Dusts and of Hazardous (Classified) Locations for Electrical Installations in Chemical Process Areas.	P
NFPA 550	Guide to the Fire Safety Concepts Tree	P
NFPA 557	Standard for Determination of Fire Load for Use in Structural Fire Protection Design	N
NFPA 560	Standard for the Storage, Handling, and Use of Ethylene Oxide for Sterilization and Fumigation	W
NFPA 655	Standard for Prevention of Sulfur Fires and Explosions	P
NFPA 1005	Standard for Professional Qualifications for Marine Fire Fighting for Land-Based Fire Fighters	P

2011 FALL REVISION CYCLE REPORT ON PROPOSALS—Continued

NFPA 1037	Standard for Professional Qualifications for Fire Marshal	P
NFPA 1041	Standard for Fire Service Instructor Professional Qualifications	P
NFPA 1051	Standard for Wildland Fire Fighter Professional Qualifications	P
NFPA 1061	Standard for Professional Qualifications for Public Safety Telecommunicator	P
NFPA 1401	Recommended Practice for Fire Service Training Reports and Records	P
NFPA 1402	Guide to Building Fire Service Training Centers	P
NFPA 1403	Standard on Live Fire Training Evolutions	C
NFPA 1906	Standard for Wildland Fire Apparatus	C
NFPA 1911	Standard for the Inspection, Maintenance, Testing, and Retirement of In-Service Automotive Fire Apparatus.	P
NFPA 1951	Standard on Protective Ensembles for Technical Rescue Incidents	P
NFPA 1961	Standard on Fire Hose	P
NFPA 1971	Standard on Protective Ensembles for Structural Fire Fighting and Proximity Fire Fighting	P
NFPA 1983	Standard on Life Safety Rope and Equipment for Emergency Services	P
NFPA 1991	Standard on Vapor-Protective Ensembles for Hazardous Materials Emergencies	P
NFPA 1992	Standard on Liquid Splash-Protective Ensembles and Clothing for Hazardous Materials Emergencies	P
NFPA 1994	Standard on Protective Ensembles for First Responders to CBRN Terrorism Incidents	P

P = Partial revision; W = Withdrawal; R = Reconfirmation; N = New; C = Complete Revision.

Dated: October 22, 2010.

Harry Hertz,

Director, Baldrige Performance Excellence Program.

[FR Doc. 2010–27431 Filed 10–28–10; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket Number: 101015516–0516–02]

Technology Innovation Program (TIP) Seeks Comments on White Papers

AGENCY: National Institute of Standards and Technology (NIST), Department of Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology's (NIST) Technology Innovation Program (TIP) announces that it is seeking comments on white papers prepared by TIP staff from any interested party, including academia; Federal, State, and local governments; industry; national laboratories; and professional organizations/societies; and others. Comments will assist in the further refinement of areas of critical national need and the associated technical challenges that could be addressed in future TIP competitions.

DATES: The dates for submission of comments on white papers are: October 29, 2010 through September 30, 2011.

ADDRESSES: The white papers are available on TIP's Web site at *http://www.nist.gov/tip/wp/index.cfm.* Comments on white papers may be submitted using the comment button found on the first and last page of each white paper found on TIP's Web site at *http://www.nist.gov/tip/wp/index.cfm.*

FOR FURTHER INFORMATION CONTACT: Thomas Wiggins at 301–975–5416 or by e-mail at *thomas.wiggins@nist.gov*.

SUPPLEMENTARY INFORMATION:

Background Information: The Technology Innovation Program (TIP) at the National Institute of Standards and Technology (NIST) was established for the purpose of assisting U.S. businesses and institutions of higher education or other organizations, such as national laboratories and nonprofit research institutions, to support, promote, and accelerate innovation in the United States through high-risk, high-reward research in areas of critical national need. The TIP statutory authority is Section 3012 of the America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education, and Science (COMPETES) Act, Public Law 110–69 (August 9, 2007), codified at 15 U.S.C. 278n. The TIP implementing regulations are published at 15 CFR Part 296. TIP holds competitions for funding based on addressing areas of critical national need. TIP identifies and selects topics for areas of critical national need based on input from within NIST, the TIP Advisory Board, the science and technology communities, and from the public. TIP is interested in receiving input on the identification and definition of problems that are sufficiently large in magnitude that they have the potential to inhibit the growth and well-being of our nation today.

This announcement explains the process for submitting comments on TIP white papers. Comments on white papers from experts in other Federal agencies are also valued and welcome, and will enable TIP to complement the efforts of other mission agencies and avoid duplication of their efforts, thereby leveraging resources to benefit the nation. The key concepts enumerated below are the foundation of TIP and should assist all commenters in providing input that will help TIP develop and refine an effective white paper:

a. An area of *critical national need* means an area that justifies government attention because the magnitude of the problem is large and the associated societal challenges that need to be overcome are not being addressed, but could be addressed through high-risk, high-reward research.

b. A *societal challenge* is a problem or issue confronted by society that when not addressed could negatively affect the overall function and quality of life of the nation, and as such, justifies government attention. A societal challenge is associated with barriers preventing the successful development of solutions to the area of critical national need. TIP's purpose is to provide funding that will enable U.S. businesses and institutions of higher education or other organizations, such as national laboratories and nonprofit research institutions, to tackle technical issues that can be addressed through high-risk, high-reward research. The results of the high-risk, high-reward research should have the potential for transformational results.

c. A *transformational result* is a potential project outcome that enables disruptive changes over and above current methods and strategies. Transformational results have the potential to radically improve our understanding of systems and technologies, challenging the status quo of research approaches and applications.

For an understanding of how these white papers were developed, and for detailed instructions on how to prepare and submit your own white papers to TIP, refer to *A Guide for Preparing and*

Submitting White Papers on Areas of Critical National Need. The *Guide* is available on the TIP Web site at *http://www.nist.gov/tip/wp/upload/guide_for_white_papers.pdf.*

In this call for comments on white papers, TIP is seeking information to further develop and refine the areas of critical national need that were the subject of prior TIP competitions as well as the topic areas under development for future TIP competitions. TIP may use comments received to further develop the definition and scope of the critical national needs suggested by these topic areas, and to additionally identify and explain specific societal challenges that require a technical solution within these critical national need areas. Do not include ideas for specific proposals in your comments on the white paper (*i.e.,* do not discuss your specific solution to the problem). This solicitation for comments on white papers is neither a Request for Proposals (RFP) nor a request for pre-proposals. Rather, it is a way to include ideas from the public to identify problems that justify government support and that can be addressed by technological innovations that are not currently being sufficiently supported to meet the challenge.

Comments on white papers must not contain proprietary information. Submission of comments on a white paper means that the author(s) agrees that all the information in the comments on the white paper can be made available to the public. Information contained in submitted comments will be considered and combined with information from other resources—including the vision of the Administration, NIST, other government agencies, technical communities, the TIP Advisory Board, and other members of the public—to develop the scope of future competitions and to shape TIP's collaborative outreach. Comments on white papers are a valuable resource that adds to TIP's understanding of the significance and scope of critical national needs and associated societal challenges.

This current call for comments pertains to the white papers that describe the areas of critical national need as described in the FY 2010 TIP competition and the FY 2009 TIP competition, as well as four proposed critical national need topic areas, as described below.

FY 2010 Competition

In the FY 2010 TIP competition, the topic of *Manufacturing* was identified as an area of critical national need. The topic area of Manufacturing, based on the white paper *Manufacturing and Biomanufacturing: Materials Advances and Critical Processes,* built on the two societal challenges addressed in the FY 2009 TIP competition, which was entitled *Accelerating the Incorporation of Materials Advances into Manufacturing Processes,* and included a third societal challenge for critical process advances in manufacturing and biomanufacturing. The focus of this competition was on the challenges associated with agile or intelligent manufacturing, sustainable manufacturing processes, specific manufacturing processes, specifically (1) *process scale-up, integration, and design for materials advances;* (2) *predictive modeling for materials advances and materials processing; and* (3) *critical process advances.* The white paper that was used in the FY 2010 TIP competition for the topic area of *Manufacturing* can be found at *http://www.nist.gov/tip/wp/index.cfm.*

FY 2009 Competition

In the FY 2009 TIP competition, the topic area of *Civil Infrastructure* was identified as an area of critical national need. The topic area of Civil Infrastructure, based on the white paper *Advanced Sensing Technologies and Advanced Repair Materials for Infrastructure: Water Systems, Dams, Levees, Bridges, Roads, and Highways,* dated March 2009, emphasized technologies to detect corrosion, cracking, delamination and other structural damage as well as repair/retrofit materials and technologies, in water resources systems such as water and wastewater pipelines, dams, levees and waterway locks, as well as bridges and roadways. The white paper that was used in the FY 2009 TIP competition for the topic area of *Civil Infrastructure* can be found at *http://www.nist.gov/tip/wp/index.cfm.*

Proposed Topic Areas

Water: The proposed topic area within the critical national need of *Water* is based on the draft white paper, *Water: New Technologies for Managing and Ensuring Future Water Availability,* which outlines the technologies that will be required to lead to improved means for better managing the quality and quantity of delivered-water supplies and for protecting the public from waterborne disease sources. Better tools are required: for environmentally benign disposition of brines and waste streams from desalination and water reclamation projects; for low-cost methods for removal of emerging contaminants from wastewater streams and from water distribution systems; for resource recovery from wastewater; and for transformative improvements in the energy costs of producing water from non-freshwater sources. The draft white paper for the proposed topic of *Water* can be found at *http://www.nist.gov/tip/wp/index.cfm.*

Advanced Robotics and Intelligent Automation: The proposed topic area *Advanced Robotics and Intelligent Automation* focuses on an area of critical national need in *Manufacturing,* it also potentially impacts other application areas such as healthcare and homeland security. The proposed *Manufacturing* topic *Advanced Robotics and Intelligent Automation* is a draft white paper that outlines infrastructural technologies that will be required for this industry to supply the next generation of solutions to manufacturers. Potential solutions that have been discussed include new techniques for manipulation and handling objects; new approaches for navigation in unstructured environments; new strategies for monitoring and controlling groups of robots; new technologies and approaches for the seamless integration of the various subsystems that make up a robot or intelligent automation system; new power and energy storage technology; new approaches to communication; and new methods for ensuring safe interactions between robots and humans. The draft white paper for the proposed topic of *Advanced Robotics and Intelligent Automation* can be found at *http://www.nist.gov/tip/wp/index.cfm.*

Energy: The proposed topic area within the critical national need area of *Energy* is based on the draft white paper, *Technologies to Enable a Smart Grid,* which outlines the technologies that will be required to enable a reliable smart grid approach to electric power distribution, demand, and response control, grid connectivity, and the integration of renewable energy sources into the grid. The proposed topic aims to address research in energy storage systems and the integration of stored energy into the grid system, advanced sensors and their energy sources to be deployed along the grid, communication and control technologies (high voltage power electronics), and modeling. The draft white paper for the proposed topic of *Energy* can be found at *http://www.nist.gov/tip/wp/index.cfm.*

Healthcare: The proposed topic area with the critical national need of *Healthcare* is based on the draft white paper *Advanced Technologies for Proteomics, Data Integration and Analysis and Biomanufacturing for Personalized Medicine,* which outlines

the platform technologies that will be needed to enable a personalized approach to safer and more cost-effective healthcare. The proposed topic specifically aims to address research needs for: non-invasively analyzing proteins in real-time in live tissues, animal models and humans; linking genomic, proteomic and other disparate datasets with patient-specific data to understand disease susceptibility and response to treatment; and cost-effective high-throughput biopharmaceutical manufacturing. The draft white paper for the proposed topic of *Healthcare* can be found at *http://www.nist.gov/tip/wp/index.cfm*.

Dated: October 20, 2010.

Harry Hertz,

Director, Baldrige Performance Excellence Program.

[FR Doc. 2010–27449 Filed 10–28–10; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket Number: 101015518–0518–02]

Technology Innovation Program (TIP) Seeks White Papers

AGENCY: National Institute of Standards and Technology (NIST), Department of Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology's (NIST) Technology Innovation Program (TIP) announces that it is seeking white papers from any interested party, including academia; Federal, State, and local governments; industry; national laboratories; professional organizations/societies, and others. White papers will be used to identify and select areas of critical national need and the associated technical challenges to be addressed in future TIP competitions.

DATES: The due dates for submission of white papers are November 29, 2010, February 15, 2011, May 10, 2011, and July 12, 2011.

ADDRESSES: Please submit white papers to National Institute of Standards and Technology, Technology Innovation Program, 100 Bureau Drive, Stop 4750, Gaithersburg, MD 20899–4750. *Attention:* Critical National Needs Ideas. White papers may also be submitted via e-mail to *tipwhitepaper@nist.gov.*

If you have previously submitted a white paper please do not resubmit the same white paper. White papers previously submitted continue to be considered as part of the selection process for future competitions.

FOR FURTHER INFORMATION CONTACT: Thomas Wiggins at 301–975–5416 or by e-mail at *thomas.wiggins@nist.gov.*

SUPPLEMENTARY INFORMATION:

Background Information: The Technology Innovation Program (TIP) at the National Institute of Standards and Technology (NIST) was established for the purpose of assisting U.S. businesses and institutions of higher education or other organizations, such as national laboratories and nonprofit research institutions, to support, promote, and accelerate innovation in the United States through high-risk, high-reward research in areas of critical national need. The TIP statutory authority is section 3012 of the America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education, and Science (COMPETES) Act, Public Law 110–69 (August 9, 2007), codified at 15 U.S.C. 278n. The TIP implementing regulations are published at 15 CFR part 296.

TIP holds competitions for funding based on addressing areas of critical national need. TIP identifies and selects topics for areas of critical national need based on input from within NIST, the TIP Advisory Board, the science and technology communities, and from the public. TIP is interested in receiving input on the identification and definition of problems that are sufficiently large in magnitude that they have the potential to inhibit the growth and well-being of our nation today. This announcement explains the requirements and process for interested parties to submit white papers to TIP. White papers from experts in other Federal agencies are valued and welcome and will enable TIP to complement the efforts of other mission agencies and avoid duplication of their efforts, thereby leveraging resources to benefit the nation.

The key concepts, enumerated below, are the foundation of TIP and should form the basis of an effective white paper:

a. An *area of critical national need* means an area that justifies government attention because the magnitude of the problem is large and the associated societal challenges that need to be overcome are not being addressed, but could be addressed through high-risk, high-reward research.

b. A *societal challenge* is a problem or issue confronted by society that when not addressed could negatively affect the overall function and quality of life of the nation, and as such, justifies government action. A societal challenge is associated with barriers preventing the successful development of solutions to the area of critical national need. TIP's mission is to tackle the technical issues that can be addressed through high-risk, high-reward research. The results of the high-risk, high-reward research should have the potential for transformational results.

c. A *transformational result* is a potential project outcome that enables disruptive changes over and above current methods and strategies. Transformational results have the potential to radically improve our understanding of systems and technologies, challenging the status quo of research approaches and applications.

The white papers are expected to contain: A description of an area of critical national need and the associated societal challenge(s) (what is the problem, why is it a problem, and why is it challenging); why government support is needed and what could happen if that support is not provided in the proposed time frame; a high-level discussion of potential scientific advancements and/or technologies that are needed to address the societal challenges; and an indication of the types of entities or groups who might be interested in developing proposal submissions to fund these scientific and/or technology approaches. Do not include ideas for specific proposals in the white paper (*i.e.,* do not include your specific solution to the problem).

This solicitation for white papers is neither a Request for Proposals (RFP) nor is it a request for pre-proposals. Rather, it is a way to include ideas from the public to identify problems that justify government support and can be addressed by technological innovations that are not currently being sufficiently supported to meet the challenge.

White papers must not contain proprietary information. Submission of a white paper means that the author(s) agrees that all the information in the white paper can be made available to the public.

Information contained in these white papers will be considered and combined with information from other resources—including the vision of the Administration, NIST, other government agencies, technical communities, the TIP Advisory Board, and other stakeholders—to develop the scope of future competitions and to shape TIP's collaborative outreach. White papers are a valuable resource that adds to TIP's understanding of the significance and scope of critical national needs and associated societal challenges. The white papers submitted could be shared

with the Administration, NIST, other government agencies, technical communities, the TIP Advisory Board, other stakeholders and the public as part of the selection process for future competitions.

For detailed instructions on how to prepare and submit white papers, refer to *A Guide for Preparing and Submitting White Papers on Areas of Critical National Need.* The *Guide* is available on the TIP Web site at *http://www.nist.gov/tip/wp/upload/guide_for_white_papers.pdf.*

In this call for white papers, TIP is seeking information in all areas of critical national need, but also seeks information to assist TIP in further defining several topic areas under development. White papers that address any of the following areas may further develop the definition and scope of the critical national needs suggested by these topic areas, and should additionally identify and explain specific societal challenges within these critical national need areas that require a technical solution. White papers may discuss any critical national need area of interest to the submitter, or may address any of the following topic areas:

Civil Infrastructure: Civil infrastructure constitutes the basic fabric of the world in which we live and work. It is the combination of fundamental systems that support a community, region, or country. The civil infrastructure includes systems for transportation (airport facilities, roads, bridges, rail, waterway locks) and systems for water distribution and flood control (water distribution systems, storm and waste water collection, dams, and levees). New construction approaches and materials to improve the infrastructure and for mitigating the expense of repairing or replacing existing infrastructure appear to be areas with the potential for specific societal challenges within this area of critical national need.

Examples could include challenges such as: Advanced materials for repair and rehabilitation of existing infrastructure, advanced inspection and monitoring technologies that assist public safety officials in determining the condition of structures, or areas of sustainability of infrastructure construction.

Complex networks and complex systems: Society is increasingly dependent on complex networks like those used for energy delivery, telecommunication, transportation, and finance over which we have imperfect control. No single organization and no collection of organizations have the ability to effectively control these multi-scale, distributed, highly interactive networks. Complex network theory will also be important in modeling neural systems, molecular physiological response to disease, and environmental systems. The current technical and mathematical methodologies that underpin our ability to simulate and model physical systems are unable to predict and control the behavior of complex systems. Stability and control of these networks can have far reaching consequences that affect our quality of life.

Examples could include challenges such as: Theoretical advances and/or proof-of-concept applications; or capabilities that can potentially address and advance the use of complex network analyses in the following areas—sustainable manufacturing models, resource management and environmental impacts (energy, water, agriculture), intelligent transportation systems, biological systems, communications networks, security systems, personalized healthcare, and others.

Energy: From agriculture to manufacturing, all endeavors require energy as input. Escalating energy demands throughout the world can lead to national security challenges, financially challenge national economies, and contribute to environmental alterations. Although heavily supported projects exist in energy research, there remain technical roadblocks that affect full deployment of new and emerging energy technologies.

Examples could include challenges such as: Technologies for improved manufacturing of critical components for alternative energy production; replacement of fossil-fuel derived fuels with non-food, renewably produced fuels; or improved technologies for stable connections of many power sources to the electrical grid.

Ensuring Future Water Supply: The nation's population and economic growth place greater demands on freshwater resources. At the same time, temporary or permanent drought conditions and water access rights affect regional freshwater availability. Water needs threaten to outstrip available freshwater, now and in the future. Water quality, both in terms of decontamination and disinfection of water supplies, is also being pressured by emerging contaminants that must either be removed from distributed water or converted to harmless forms of waste. Food contaminations are often traced back to water contaminations, either in the field or in processing. Municipal waste streams and irrigation runoff may waste resources that are not captured and/or recovered.

Examples could include challenges such as: Means to provide future freshwater supplies without undue consumption of energy resources; means that determine and assure the safety of water and food from waterborne contamination; or means to economically recover resources from wastewater streams and lower the energy cost of producing freshwater and potable water from marginalized water resources.

Healthcare: Healthcare spending per capita in the United States is high and rising, and currently approved drugs work only in a fraction of the population. Doctors are unable to select optimal drug treatments and dosages based on the patient's unique genetics, physiology, and metabolic processes, resulting in a trial-and-error component to treatment. As a consequence, significant expenditures result in drugs that are ineffective on subsets of patients, and a clear understanding of which patients may suffer side effects from prescribed medicine is lacking. The key to improved patient response lies in greater understanding of both genetic variability and environmental influences on disease mechanisms.

Examples could include challenges such as: Cost effective advanced tools and techniques for genomics and proteomics research that provide greater understanding of complex biological systems, biomarker identification, and targeted drug and vaccine delivery systems; improved and low cost diagnostic and therapeutic systems; or better methods of integration and analysis of biological data, especially when combined with environmental and patient history data.

Manufacturing: Manufacturing is a vital part of our nation's economy, which now is facing increasing challenges to global competitiveness, issues relating to the regulation and control of environmental resources, and other economic pressures. Technical advances have at times been able to enhance productivity and create other efficiencies, but the recent pressures on the manufacturing community have hindered its ability to focus the necessary resources on long term solutions that could lead to sustained economic growth in this vital sector.

Examples could include challenges such as: Manufacturing systems that have shorter innovation cycles, more flexibility, and greater ability to rapidly reconfigure; technologies to accelerate the commoditization of next generation, high-performance materials, such as nanomaterials, composites, and alloys to

specification, in a consistent, efficient and effective manner; life-cycle assessment tools that will enable sustainable manufacturing; and better automation solutions.

Nanomaterials/nanotechnology: The unique properties of nanomaterials provide extraordinary promise. There is a need for greater understanding and solutions to overcome the barriers associated with manufacturing nanomaterials and their incorporation into products, while maintaining the unique functionality of the nanomaterials. Although many processes are achievable in the laboratory, the scale-up to industrial production without compromising the quality of the produced material can be highly problematic.

Examples could include challenges such as: Methods required for manufacturing nanomaterials with pre-specified functionality and morphology; methods for inspection and real-time monitoring the processing of nanomaterials; or methods for incorporation of nanomaterials into products without compromising the material's required properties.

Sustainability: "Sustainability," was defined in April 2007 by the United Nations Commission on Sustainable Development in their "Framing Sustainable Development, The Brundtland Report—20 Years On" as, "meeting the needs of the present generation without compromising the ability of future generations to meet their needs." TIP is interested in technologies that have the potential to reduce or eliminate the environmental footprint of industrial processes and public waste streams. Sustainability is a complex and highly interdisciplinary endeavor with economic, environmental, and societal dimensions. In this context, the white papers should address elements such as cost effectiveness, energy efficiency, recyclability, safety, resource use, life-cycle analysis, and ecosystem health.

Examples could include challenges such as: Technologies to develop feedstocks from renewable sources; technologies to recover resources (minerals, materials, energy, water) from industry and other/public waste streams; low-cost, low-energy separation technologies; and replacement of hazardous/toxic materials with safer, more cost-effective materials and/or process technology.

Dated: October 25, 2010.

Harry S. Hertz,

Director, Baldrige Performance Excellence Program.

[FR Doc. 2010–27435 Filed 10–28–10; 8:45 am]

BILLING CODE 3510–13–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List, Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products from the Procurement List previously furnished by such agencies.

DATES: *Effective Date:* 11/29/2010.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 6/19/2009 (74 FR 29187–29189) and 9/10/2010 (75 FR 55309–55310), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

NSN: 8470–00–NSH–0030—Improved Oxygen Harness.
NSN: 8470–00–NSH–0031—Center Mounted Weapon Harness.
NPA: Employment Source, Inc., Fayetteville, NC.
Contracting Activity: Department of the Army Research, Development, & Engineering Command, Natick, MA.
Coverage: C–List for 100% of the requirement of the U.S. Army, as aggregated by the Department of the Army Research, Development, & Engineering Command, Natick, MA.

Drawers, Midweight Cold Weather (Gen III)

NSN: 8415–01–538–8727—Drawers Size Small Regular.
NSN: 8415–01–538–8730—Drawers Size Medium Regular.
NSN: 8415–01–538–8745—Drawers Size Large Regular.
NSN: 8415–01–538–8747—Drawers Size Large Long.
NSN: 8415–01–538–8750—Drawers Size X Large Regular.
NSN: 8415–01–538–8751—Drawers Size X Large Long.
NSN: 8415–01–545–7672—Drawers Size X Small Short.
NSN: 8415–01–545–7676—Drawers Size X Small Regular.
NSN: 8415–01–545–7717—Drawers Size Small Short.
NSN: 8415–01–545–7768—Drawers Size Small Long.
NSN: 8415–01–545–7810—Drawers Size Medium Long.
NSN: 8415–01–545–7960—Drawers Size X Large X Long.
NSN: 8415–01–545–7965—Drawers Size XX Large Regular.
NSN: 8415–01–545–7966—Drawers Size XX Large Long.
NSN: 8415–01–545–7968—Drawers Size XX Large X Long.
NPAs: New Horizons Rehabilitation Services, Inc., Auburn Hills, MI; Peckham Vocational Industries, Inc., Lansing, MI.
Contracting Activity: Defense Logistics Agency Troop Support, Philadelphia, PA

Coverage: C–List for an additional 25% of the requirement of the Department of Defense, as aggregated by the Defense Logistics Agency Troop Support, Philadelphia, PA. Note that 75% of this requirement is already on the PL; this addition will bring the total to 100% of the requirement.

Services

Service Type/Locations: Custodial Service, USARC Mare Island, 1481 Railroad Ave., Vallejo, CA; USARC Hunter Hall, 2600 Castro Rd, San Pablo, CA.
NPA: Solano Diversified Services, Vallejo, CA.
Contracting Activity: Dept of the Army, XR W6BB ACA Presidio of Monterey, Presidio of Monterey, CA.
Service Type/Location: Janitorial Service, Anchorage FAA Tower/TRACON, 5200 West International Airport Road, Anchorage, AK.
NPA: MQC Enterprises, Inc., Anchorage, AK.
Contracting Activity: Dept Of Transportation, Federal Aviation Administration, Northwest/Mountain Reg, Log. Div (ANM–55), Renton, WA.
Service Type/Locations: Warehouse Service, Navy Regional Supply Office Oceana, 983 D Avenue, Virginia Beach, VA; Navy Regional Supply Office, 452 Warehouse Street, Norfolk, VA.
NPA: Professional Contract Services, Inc., Austin, TX.
Contracting Activity: Dept of the Navy, FISC Norfolk, Norfolk, VA.

Deletions

On 8/27/2010 (75 FR 52723–52724) and 9/3/2010 (75 FR 54115), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products deleted from the Procurement List.

End of Certification

Accordingly, the following products are deleted from the Procurement List:

Products

NSN: 7530–00–082–2663—Label, Pressure-Sensitive Adhesive.
NPA: North Central Sight Services, Inc., Williamsport, PA.
Contracting Activity: GSA/FSS OFC SUP CTR—Paper Products, New York, NY.

Specimen Container

NSN: 6550–00–NIB–0009—1/4 turn cap, sterile individually wrapped.
NSN: 6550–00–NIB–0010—1/4 turn cap, sterile.
NSN: 6550–00–NIB–0011—1/4 turn cap, non-sterile.
NSN: 6550–00–NIB–0013—full turn cap, sterile.
NSN: 6550–00–NIB–0019—120 ml, sterile, 300/case.
NSN: 6550–00–NIB–0020—120 ml, non-sterile, 300/case.
NSN: 6550–00–NIB–0021—120 ml, sterile, individually wrapped, 100/case.
NPA: Alphapointe Association for the Blind, Kansas City, MO.
Contracting Activity: Dept of Veterans Affairs, NAC, Hines, IL.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2010–27409 Filed 10–28–10; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

[USACE Project No. SWF–2007–00560]

Availability of a Draft Environmental Impact Statement To Consider Issuance of a Department of the Army Permit Pursuant to Section 404 of the Clean Water Act for the Sabine Mining Company's Proposal To Construct, Operate, and Reclaim the Rusk Permit Area, Rusk, Panola, and Harrison Counties, TX

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: In accordance with the requirements of the National Environmental Policy Act (NEPA), the U.S. Army Corps of Engineers (USACE) Fort Worth District has prepared a Draft Environmental Impact Statement (DEIS). This DEIS evaluates project alternatives and potential impacts to the natural, physical and human environment as a result of the Sabine Mining Company's proposal to construct, operate and reclaim the Rusk Permit Area. The USACE regulates this proposed project pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. The proposed activity would involve the discharge of dredged and fill material into waters of the United States associated with the proposed construction, operation and reclamation of the Rusk Permit Area.

DATES: Submit comments no later than 60 days from the date of publication of this notice. An informal public information meeting (open house format) regarding this DEIS will be held on November 15, 2010, and a formal public hearing regarding this DEIS will be held on November 16, 2010 (*see* **SUPPLEMENTARY INFORMATION**).

ADDRESSES: Send written comments and suggestions concerning this proposal to Mr. Darvin Messer, Regulatory Project Manager, Regulatory Branch, CESWF–PER–R, U.S. Army Corps of Engineers, Fort Worth District, P.O. Box 17300, Fort Worth, TX 76102–0300 or via e-mail: *Darvin.Messer@usace.army.mil.* Requests to be placed on the mailing list should also be sent to this address. Please reference USACE Project No. SWF–2007–00560.

FOR FURTHER INFORMATION CONTACT: Mr. Darvin Messer, Regulatory Project Manager at (817) 886–1744 or via e-mail: *Darvin.Messer@usace.army.mil.*

SUPPLEMENTARY INFORMATION: Discharges of fill material into waters of the United States are regulated under Section 404 of the Clean Water Act, with the permitting responsibility administered by the USACE. The proposed project must also address environmental impacts relative to the Clean Air Act, Clean Water Act, Endangered Species Act and the Fish and Wildlife Coordination Act (FWCA). In accordance with the NEPA, the DEIS evaluates practicable alternatives for the USACE's decision making process. As required by NEPA, the USACE also analyzes the "no action" alternative as a baseline for gauging potential impacts.

As part of the public involvement process, notice is hereby given by the USACE Fort Worth District of an informal public information meeting (open house format) to be held at the Tatum High School Auxiliary Gymnasium, Tatum, TX, from 5 to 7:30 p.m. on November 15, 2010. This meeting will afford interested parties the opportunity to engage in a dialog with the USACE regarding the EIS process and the analyses performed to date. The USACE Fort Worth District will also be holding a formal public hearing to be held at the Tatum High School Auditorium, Tatum, TX, from 5 to 7:30 p.m. on November 16, 2010. The public hearing will allow participants the opportunity to comment on the DEIS

prepared for the proposed Rusk Permit Area. Written comments should be sent to Mr. Darvin Messer (*see* **ADDRESSES**). The comments are due no later than 60 days from the date of publication of this notice. Copies of the DEIS may be obtained by contacting USACE Fort Worth District Regulatory Branch at (817) 886–1731 or downloaded/printed from the Fort Worth District USACE Internet Web site at: *http://www.swf.usace.army.mil/pubdata/environ/regulatory/permitting/rusk.asp.*

Copies of the DEIS are also available for inspection at the locations identified below:

(1) Tatum Public Library, 335 Hood Street, Tatum, TX 75691.

(2) Sammie Brown Library, 522 West College Street, Carthage, TX 75633.

(3) Longview Public Library, 222 West Cotton Street, Longview, TX 75601.

(4) Rusk County Library, 106 East Main St., Henderson, TX 75652.

(5) Marshall Public Library, 300 South Alamo Boulevard, Marshall, TX 75670.

(6) Henderson City Hall, 400 West Main Street, Henderson, TX 75652.

(7) Tatum City Hall, 680 Crystal Farms Road, Tatum, TX 75691.

(8) Longview City Hall, 300 West Cotton Street, Longview, TX 75601.

(9) Carthage City Hall, 812 West Panola Street, Carthage, TX 75633.

(10) Marshall City Hall, 401 South Alamo Boulevard, Marshall, TX 75785.

After the public comment period ends, the USACE will consider all comments received, revise the DEIS as appropriate, and issue a Final Environmental Impact Statement.

Stephen L. Brooks,

Chief, Regulatory Branch.

[FR Doc. 2010–27056 Filed 10–28–10; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Air Force

U.S. Air Force Academy Board of Visitors Notice of Meeting

AGENCY: United States Air Force Academy Board of Visitors.

ACTION: Meeting notice.

SUMMARY: Pursuant to 10 U.S.C. 9355, the US Air Force Academy (USAFA) Board of Visitors (BoV) will meet in the Capitol Building Main Visitor Center Conference Rooms 208/209 in Washington DC on 10 December 2010. The meeting session will begin at 10:30 a.m. The purpose of this meeting is to review morale and discipline, social climate, curriculum, instruction, infrastructure, fiscal affairs, academic methods, and other matters relating to the Academy. Specific topics for this meeting include on update on the "Fix USAFA" initiative to renovate aging infrastructure; an overview of Academy science, technology, engineering, mathematics, and cyber programs; status of Congressional nomination outreach program; and an update on the Air Force Academy Athletic Corporation initiative.

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155, the Administrative Assistant to the Secretary of the Air Force has determined that a portion of this meeting shall be closed to the public. The Administrative Assistant to the Secretary of the Air Force, in consultation with the Office of the Air Force General Counsel, has determined in writing that the public interest requires that one portion of this meeting be closed to the public because it will involve matters covered by subsection (c)(6) of 5 U.S.C. 552b.

Public attendance at the open portions of this USAFA BoV meeting shall be accommodated on a first-come, first-served basis up to the reasonable and safe capacity of the meeting room. In addition, any member of the public wishing to provide input to the USAFA BoV should submit a written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act (FACA) and the procedures described in this paragraph. Written statements must address the following details: the issue, discussion, and a recommended course of action. Supporting documentation may also be included as needed to establish the appropriate historical context and provide any necessary background information. Written statements can be submitted to the Designated Federal Officer (DFO) at the Air Force Pentagon address detailed below at any time. However, if a written statement is not received at least 10 days before the first day of the meeting which is the subject of this notice, then it may not be provided to, or considered by, the BoV until its next open meeting. The DFO will review all timely submissions with the BoV Chairperson and ensure they are provided to members of the BoV before the meeting that is the subject of this notice. For the benefit of the public, rosters that list the names of BoV members and any releasable materials presented during open portions of this BoV meeting shall be made available upon request.

If, after review of timely submitted written comments, the BoV Chairperson and DFO deem appropriate, they may choose to invite the submitter of the written comments to orally present their issue during an open portion of the BoV meeting that is the subject of this notice. Members of the BoV may also petition the Chairperson to allow specific persons to make oral presentations before the BoV. Per 41 CFR 102–3.140(d), any oral presentations before the BoV shall be in accordance with agency guidelines provided pursuant to a written invitation and this paragraph. Direct questioning of BoV members or meeting participants by the public is not permitted except with the approval of the DFO and Chairperson.

FOR FURTHER INFORMATION CONTACT: To attend this BoV meeting, contact Mr. David Boyle, USAFA Programs Manager, Directorate of Force Development, Deputy Chief of Staff, Manpower, Personnel, and Services AF/A1DOA, 2221 S. Clark St, Ste 500, Arlington, VA 22202, (703) 604–8158.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. 2010–27362 Filed 10–28–10; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; List of Correspondence

AGENCY: Department of Education.

ACTION: List of correspondence from April 1, 2010 through June 30, 2010.

SUMMARY: The Secretary is publishing the following list pursuant to section 607(f) of the Individuals with Disabilities Education Act (IDEA). Under section 607(f) of the IDEA, the Secretary is required, on a quarterly basis, to publish in the **Federal Register**, a list of correspondence from the U.S. Department of Education (Department) received by individuals during the previous quarter that describes the interpretations of the Department of the IDEA or the regulations that implement the IDEA.

FOR FURTHER INFORMATION CONTACT: Laurel Nishi or Mary Louise Dirrigl. *Telephone:* (202) 245–7468.

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

Individuals with disabilities can obtain a copy of this notice in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the contact persons listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: The following list identifies correspondence from the Department issued from April 1, 2010 through June 30, 2010. Included on the list are those letters that contain interpretations of the requirements of the IDEA and its implementing regulations, as well as letters and other documents that the Department believes will assist the public in understanding the requirements of the law and its regulations. The date of and topic addressed by each letter are identified, and summary information is also provided, as appropriate. To protect the privacy interests of the individual or individuals involved, personally identifiable information has been redacted, as appropriate.

Part B—Assistance for Education of All Children With Disabilities

Section 612—State Eligibility

Topic Addressed: Free Appropriate Public Education

o Letter dated May 14, 2010 to New York State Education Department Vocational and Educational Services for Individuals with Disabilities Deputy Commissioner Rebecca Cort, regarding whether there is a relationship between General Education Development (GED) programs and free appropriate public education (FAPE) requirements.

Topic Addressed: Children in Private Schools

o Letter dated May 5, 2010 to Maryland attorney Jerrold Miller, regarding the limitation on a parent's right to reimbursement for the cost of his or her child's private school placement when FAPE is at issue.

Topic Addressed: State Educational Agency General Supervisory Authority

o Letter dated June 9, 2010 to Maryland attorney Eric Brousaides, clarifying that a State determines the form of documentation necessary to show that public agencies are in compliance with individualized education program (IEP) requirements.

Topic Addressed: Maintenance of State Financial Support

○ Letter dated June 14, 2010 to National Association of State Directors of Special Education Executive Director Bill East, reiterating that the calculation of State financial support for special education and related services for children with disabilities includes financial support made available by agencies other than the State educational agency.

○ Letter dated June 30, 2010 to Missouri Department of Elementary and Secondary Education Division of Special Education Assistant Commissioner Heidi Atkins-Lieberman, clarifying that a State that decides to discontinue participation in the IDEA section 619 program may not reduce State financial support for special education and related services for children with disabilities.

Section 613—Local Educational Agency Eligibility

Topic Addressed: Maintenance of Effort

○ Letter dated June 28, 2010 to individual (personally identifiable information redacted), clarifying local educational agency maintenance of fiscal effort requirements.

Topic Addressed: Use of Federal Funds

○ Letter dated June 1, 2010 to Michigan Department of Education Office of Special Education and Early Intervention Services official John Andrejack, clarifying requirements for expending the proportionate amount of Part B, IDEA funds for equitable services, use of funds for coordinated early intervening services, and local maintenance of effort.

Section 614—Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements

Topic Addressed: Evaluations, Parental Consent, and Reevaluations

○ Letter dated June 2, 2010 to Head Start/Hilton Foundation Training Program SpecialQuest Birth-Five Director Linda Brekken, regarding whether the response to intervention requirements in Part B of the IDEA are applicable to children ages three through five enrolled in Head Start programs.

○ Letter dated June 3, 2010 to Missouri attorney Deborah S. Johnson, regarding the definition of consent in the regulations implementing Part B of the IDEA.

Electronic Access to This Document

You can view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister/index.html*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

(Catalog of Federal Domestic Assistance Number 84.027, Assistance to States for Education of Children with Disabilities)

Dated: October 25, 2010.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2010–27406 Filed 10–28–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL10–84–001]

Californians for Renewable Energy, Inc. (CARE) v. Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, California Public Utilities Commission; Notice of Amended Complaint

October 21, 2010,

Take notice that on October 20, 2010, pursuant to Rules 212 and 215 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.212 and 18 CFR 385.215, CAlifornians for Renewable Energy, Inc. (Complainant) filed an amendment to its September 1, 2010 filed complaint against Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, and the California Public Utilities Commission (Collectively Respondents), alleging that the Respondents are violating the Federal Power Act by approving contracts for capacity and energy that exceeds the utilities' avoided cost cap *etc.*

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the

"eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on November 4, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–27398 Filed 10–28–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2655–045 and 8519–009]

Eagle and Phenix Hydro Company, Inc. and UPtown Columbus, Inc.; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

October 21, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Types of Application:* Surrender of License and Surrender of Exemption, respectively.

b. *Project Nos.:* 2655–045 and 8519–009, respectively.

c. *Date Filed:* August 23, 2010.

d. *Applicants:* Eagle and Phenix Hydro Company, Inc. and UPtown Columbus Inc., respectively.

e. *Name of Projects:* Eagle and Phenix Mills and City Mills Hydroelectric Projects.

f. *Location:* Lower Chattahoochee River Basin on the main stem of the Chattahoochee River in the City of Columbus, Muscogee County, Georgia, and Phenix City, Russell County, Alabama.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Donald H. Clarke, Esq., Law Office of GKRSE, 1500 K Street, NW., Suite 330, Washington, DC 20005, (202) 408-5400.

i. *FERC Contact:* Mr. Jeremy Jessup, (202) 502–6779, *Jeremy.Jessup@ferc.gov*.

j. Deadline for filing comments, motions to intervene, and protests, is 30 days from the issuance date of this notice. All documents may be filed electronically via the Internet. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp*. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments.

Please include the project numbers (P–2655–045 and P–8519–009) on any comments, motions, or recommendations filed.

k. *Description of Request:* The applicant proposes to surrender the license and exemption for the Eagle and Phenix Mills (P–2655) and City Mills (P–8519) Hydroelectric Projects, respectively. The applicant states that the surrenders are necessary for the initiation of the Aquatic Ecosystem Restoration of the Chattahoochee River. The applicant also states that the ecosystem restoration project would involve the partial removal of the Eagle and Phenix Mills and City Mills Dams.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the license surrender. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–27400 Filed 10–28–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2899–136]

Idaho Power Company and Milner Dam, Inc; Notice of Application for Amendment of License, and Soliciting Comments, Motions To Intervene, and Protests

October 22, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Non-Capacity Amendment of License.

b. *Project No.:* 2899–136.

c. *Date Filed:* April 14, 2010.

d. *Applicant:* Idaho Power Company and Milner Dam, Inc.

e. *Name of Project:* Milner Hydroelectric Project.

f. *Location:* The project is located on the Snake River in Twin Falls and Cassia Counties, Idaho.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Rex Blackburn, Senior Vice President and General Counsel, and Nathan F. Gardiner, Idaho Power Company, 1221 West Idaho Street, P.O. Box 70, Boise, Idaho 83707–0070; telephone: (208) 388–2713.

i. *FERC Contact:* Any questions regarding this notice should be directed to Mr. Anthony DeLuca (202) 502–6632 or *Anthony.deluca@ferc.gov.*

j. *Deadline for filing comments, motions to intervene and protest:* November 22, 2010. All documents may be filed electronically via the Internet. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments.

Please include the project number (P–2899–136) on any comments, motions, or recommendations filed.

k. *Description of Request:* The licensees proposes to delete Articles 407 and 425 from the "Order Issuing License" issued December 15, 1988, which require a target flow of 200 cubic feet per second in the bypassed reach and a related drought contingency plan. The licensees state that the benefits of using Idaho Power Company's water storage space for uses other than providing a target flow in the bypassed reach outweigh the benefits of the above license article requirements. Further, the licensees request the Commission to delete Article 401, which requires them to lease available water from the Upper Snake Water Supply Bank.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene or protests should relate to project works which are the subject of the license amendment. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–27402 Filed 10–28–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13832–000]

SPS of Oregon; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, Protests, Recommendations, and Terms and Conditions

October 22, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 13832–000.

c. *Date filed:* August 9, 2010.

d. *Applicant:* SPS of Oregon.

e. *Name of Project:* SPS of Oregon Hydroelectric Project.

f. *Location:* The project is located near the City of Wallowa, in Wallowa County, Oregon.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Ben Henson, Renewable Energy Solutions, LLC, P.O. Box 156, Enterprise, Oregon 97828, (541) 426–4100.

i. *FERC Contact:* Mr. Jeremy Jessup, (202) 502–6779, *Jeremy.Jessup@ferc.gov.*

j. *Status of Environmental Analysis:* This application is ready for

environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

k. *Deadline for filing responsive documents:* Due to the small size and location of the proposed project in a closed system, as well as the resource agency consultation letters filed with the application, the 60-day timeframe specified in 18 CFR 4.43(b) for filing all comments, motions to intervene, protests, recommendations, terms and conditions, and prescriptions is shortened to 30 days from the issuance date of this notice. All reply comments filed in response to comments submitted by any resource agency, Indian Tribe, or person, must be filed with the Commission within 45 days from the issuance date of this notice.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. The Commission strongly encourages electronic filings.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of Project:* Renewable Energy Solutions, LLC, on behalf of SPS of Oregon, requests Commission approval for exemption for a small conduit hydroelectric facility. This proposal consists of adding a Pelton style 11 kilowatt hydraulic turbine/generator into an existing 10 inch PVC pipeline used to carry water from one ditch to another within an irrigation system. The primary purpose of the conduit is agricultural use. The hydraulic capacity of the generator will be 2 cubic feet per second and the generator will have an estimated average annual generation of 75,718 kWh.

m. This filing is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street, NE., Washington, DC 20426. The filing may also be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number, P–13832, in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for review and reproduction at the address in item h above.

n. *Development Application*—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a competing development application. A notice of intent must be served on the applicant(s) named in this public notice.

p. *Protests or Motions to Intervene*—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

q. All filings must (1) Bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "COMMENTS", "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original plus seven copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Office of Energy Projects, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

r. *Waiver of Pre-filing Consultation:* On May 5, 2010, the applicant requested the agencies to support the waiver of the Commission's consultation requirements under 18 CFR 4.38(c). On June 11, 2010, the Oregon Department of Environmental Quality concurred with this request. On June 2, 2010, the Bureau of Land Management stated it had no concerns with the project if constructed in accordance with the Fish and Wildlife Service's and the Oregon Department of Fish and Wildlife's design requirements and on June 23, 2010, the Fish and Wildlife Service stated it had no concerns with the project. No other comments were received. Therefore, we intend to accept the consultation that has occurred on this project during the pre-filing period and we intend to waive pre-filing consultation under section 4.38(c), which requires, among other things, conducting studies requested by resource agencies, and distributing and consulting on a draft exemption application.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–27403 Filed 10–28–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2677–019]

City of Kaukauna, WI; Notice of Authorization for Continued Project Operation

October 22, 2010.

On August 29, 2007, the City of Kaukauna, Wisconsin, licensee for the Badger-Rapide Croche Hydroelectric Project, filed an Application for a New License pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The Badger-Rapide Croche Hydroelectric Project is on the Fox River in Outagamie County, near the City of Kaukauna, Wisconsin.

The license for Project No. 2677, as amended, ended on August 9, 2010. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2677 is issued to the City of Kaukauna, Wisconsin for a period effective August 10, 2010 through August 9, 2011, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before August 9, 2011, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that City of Kaukauna, Wisconsin, is authorized to continue operation of the Badger-Rapide Croche Hydroelectric Project, until such time as the Commission acts on its application for a subsequent license.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–27401 Filed 10–28–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR11–68–000; Docket No. PR11–69–000; Docket No. PR10–112–001; Docket No. PR10–36–001; Docket No. PR10–19–001; Docket No. PR11–7–000]

Notice of Baseline Filings

October 22, 2010.

ONEOK Gas Transportation, L.L.C	Docket No. PR11–68–000.
Mid Continent Market Center, L.L.C	Docket No. PR11–69–000.
ONEOK Field Services Company, L.L.C	Docket No. PR10–112–001.
ONEOK Texas Gas Storage, L.L.C	Docket No. PR10–36–001.
ONEOK Westex Transmission, L.L.C	Docket No. PR10–19–001.
Corning Natural Gas Corporation	Docket No. PR11–7–000. Not Consolidated.

Take notice that on October 15, 2010, and October 19, 2010, respectively the applicants listed above submitted a revised baseline filing of their Statement of Operating Conditions for services provided under Section 311 of the Natural Gas Policy Act of 1978 ("NGPA").

Any person desiring to participate in this rate proceeding must file a motion 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 and 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 date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not 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 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online 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 e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Monday, November 1, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–27404 Filed 10–28–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

October 25, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–1009–002.

Applicants: Carolina Gas Transmission Corporation.

Description: Carolina Gas Transmission Corporation submits tariff filing per 154.203: Order 587–U Compliance Filing (NAESB Vs. 1.9) to be effective 11/1/2010.

Filed Date: 10/22/2010.

Accession Number: 20101022–5099.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 03, 2010.

Docket Numbers: RP10–658–001.

Applicants: ANR Pipeline Company.

Description: ANR Pipeline Company submits tariff filing per 154.203: RP10–658 Compliance to be effective 4/28/2010.

Filed Date: 10/22/2010.

Accession Number: 20101022–5035.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 03, 2010.

Docket Numbers: RP10–772–001.

Applicants: Blue Lake Gas Storage Company.

Description: Blue Lake Gas Storage Company submits tariff filing per 154.203: RP10–772 Compliance to be effective 5/27/2010.

Filed Date: 10/22/2010.

Accession Number: 20101022–5073.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 03, 2010.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest 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 e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–27345 Filed 10–28–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

October 21, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP11–1418–000.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: HK to Sequent CR to be effective 11/1/2010.

Filed Date: 10/20/2010.

Accession Number: 20101020–5070.

Comment Date: 5 p.m. Eastern Time on Monday, November 1, 2010.

Docket Numbers: RP11–1419–000.

Applicants: Northern Natural Gas Company.

Description: Northern Natural Gas Company submits tariff filing per 154.203: 20101020 NAESB 1.9 to be effective 9/29/2010.

Filed Date: 10/20/2010.

Accession Number: 20101020–5127.

Comment Date: 5 p.m. Eastern Time on Monday, November 1, 2010.

Docket Numbers: RP11–1420–000.

Applicants: ETC Tiger Pipeline, LLC.

Description: ETC Tiger Pipeline, LLC submits tariff filing per 154.203: Tiger NAESB Version 1.9 Compliance Filing to be effective 12/1/2010.

Filed Date: 10/20/2010.

Accession Number: 20101020–5147.

Comment Date: 5 p.m. Eastern Time on Monday, November 1, 2010.

Docket Numbers: RP11–1421–000.

Applicants: East Tennessee Natural Gas, LLC.

Description: East Tennessee Natural Gas, LLC submits tariff filing per 154.204: Negotiated Rate Agreement—Range Resources to be effective 10/20/2010.

Filed Date: 10/21/2010.

Accession Number: 20101021–5029.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 2, 2010.

Docket Numbers: RP11–1422–000.

Applicants: Dominion Transmission, Inc.

Description: Dominion Transmission, Inc. submits tariff filing per 154.204: DTI—CP09–44 Volume 1A Change to be effective 11/1/2010.

Filed Date: 10/21/2010.

Accession Number: 20101021–5030.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 2, 2010.

Docket Numbers: RP11–1423–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: Transcontinental Gas Pipe Line Company, LLC submits tariff filing per 154.204: GSS LSS Tracker Filing to be effective 11/1/2010.

Filed Date: 10/21/2010.

Accession Number: 20101021–5052.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 2, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. 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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings 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 e-mail

notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–27346 Filed 10–28–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

October 25, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP11–1424–000.

Applicants: Natural Gas Pipeline Company of America.

Description: Natural Gas Pipeline Company of America LLC submits tariff filing per 154.204: Revisions to Form of Service Agreements to be effective 11/21/2010.

Filed Date: 10/21/2010.

Accession Number: 20101021–5063.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 2, 2010.

Docket Numbers: RP11–1425–000.

Applicants: Texas Gas Transmission, LLC.

Description: Texas Gas Transmission, LLC submits tariff filing per 154.204: Remove References to Expired Lease to be effective 12/1/2010.

Filed Date: 10/21/2010.

Accession Number: 20101021–5065.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 2, 2010.

Docket Numbers: RP11–1426–000.

Applicants: Bobcat Gas Storage.

Description: Bobcat Gas Storage submits tariff filing per 154.204: Cleanup GT&C Section 23 to be effective 11/1/2010.

Filed Date: 10/21/2010.

Accession Number: 20101021–5119.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 2, 2010.

Docket Numbers: RP11–1427–000.

Applicants: Rockies Express Pipeline LLC.

Description: Rockies Express Pipeline LLC submits tariff filing per 154.204: Restructure Negotiated Rates to be effective 11/22/2010.

Filed Date: 10/22/2010.

Accession Number: 20101022–5063.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 3, 2010.

Docket Numbers: RP11–1428–000.

Applicants: Texas Eastern Transmission, LP.

Description: Texas Eastern Transmission, LP submits tariff filing per 154.403(d)(2): ASA TETLP DEC 2010 FILING to be effective 12/1/2010.

Filed Date: 10/22/2010.

Accession Number: 20101022–5071.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 3, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. 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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings 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 e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–27347 Filed 10–28–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Albany-Eugene Transmission Line Rebuild Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: In accordance with the National Environmental Policy Act (NEPA), BPA intends to prepare an EIS on its proposed rebuild of a 32-mile section of the Albany-Eugene 115-kilovolt (kV) No. 1 Transmission Line in Lane and Linn counties, Oregon. The deteriorated condition of this 70-year old line compromises BPA's ability to maintain reliable electric service and poses a safety risk to the public and maintenance crews. With this notice BPA is initiating the public scoping process for the Albany-Eugene Transmission Line Rebuild Project EIS and requesting comments about the potential environmental impacts it should consider as it prepares the EIS for the proposed project.

DATES: Written comments are due to the address below no later than November 30, 2010. Comments may also be made at two EIS scoping meetings to be held on November 16 and 17, 2010 at the the addresses below.

ADDRESSES: Comments and suggestions on the proposed scope of the Draft EIS for this project and requests to be placed on the project mailing list may be mailed by letter to Bonneville Power Administration, Public Affairs—DKC–7, P.O. Box 14428, Portland, OR 97292–4428. Or you may FAX them to 503–230–3285; submit them on-line at *http://www.bpa.gov/comment;* or e-mail them to *comment@bpa.gov.* On November 16, 2010 a scoping meeting will be held from 4:30 p.m. to 7 p.m. at Harrisburg High School, 400 South 9th Street, Harrisburg, Oregon 97446. On November 17, 2010, a scoping meeting will held from 4:30 p.m. to 7 p.m. at the Albany Public Library, 2450 14th Avenue SE., Albany, Oregon 97322. At these informal open-house meetings, BPA will provide information, including maps, about the project. Members of the project team will be

available to answer questions and accept oral and written comments.

FOR FURTHER INFORMATION CONTACT: Doug Corkran, Environmental Coordinator, Bonneville Power Administration—KEC–4, P.O. Box 3621, Portland, Oregon, 97208–3621; toll-free telephone number 1–800–622–4519; direct number (503) 230–7646; fax number 503–230–5699; or e-mail *dfcorkran@bpa.gov.* You may also contact Erich Orth, Project Manager, Bonneville Power Administration—TEP–TPP–3, P.O. Box 3621, Portland, Oregon 97208–3621; toll-free telephone 1–800–622–4519; direct telephone 360–619–6559; or e-mail *etorth@bpa.gov* Additional information can be found at BPA's Web site: *http://www.efw.bpa.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Action: BPA proposes to rebuild a 32-mile section of the Albany-Eugene 115-kV No. 1 Transmission Line. No major work has been done on the line since it was built in 1940. Many of the structures, the electric wire (conductor), and associated structural components (cross arms, insulators, and dampers) are physically worn and structurally unsound in places. The wood transmission poles have lasted beyond the expected 55 to 60 years and now need to be replaced due to age, rot, and deterioration. Rebuilding the deteriorated line would maintain reliable electrical service and avoid risks to the safety of the public and maintenance crews.

Proposed activities would include establishing temporary access to the line, improving some access roads, developing staging areas for storage of materials, removing and replacing existing wood pole structures and associated structural components and conductor, and revegetating areas disturbed by construction activities. The existing structures would be replaced with structures of similar design within or near to their existing locations. The line would continue to operate at 115-kV. Danger trees and brush located off the existing right-of-way (ROW) would be removed. A danger tree is a tree located off the ROW that is a present or future hazard to the transmission line. A tree is identified as a danger tree if it would contact BPA facilities should it fall, bend, grow within a swing displacement of the conductor, or grow into the conductor. Danger tree removal would take place concurrently with project construction.

Process to Date: In February 2010, BPA announced its proposed rebuild and its intent to prepare an Environmental Assessment (EA) for the proposed project. BPA held a public meeting in March 2010, in Junction City, Oregon. Two comment letters were received during the comment period, which closed on March 27, 2010. Since that time BPA has determined that a significant number of danger trees would need to be removed to prevent damage to the line and that a different kind of NEPA document—an EIS rather than an EA—is required because of the potential for significant environmental impact.

Alternatives Proposed for Consideration: In addition to the Proposed Action, BPA will evaluate the No Action Alternative. Under the No Action Alternative, BPA would not rebuild the line; current operation and maintenance activities would continue.

Public Participation and Identification of Environmental Issues: The potential environmental issues identified for most transmission line projects include land use, cultural resources, visual impact, sensitive plants and animals, erosion/soils, wetlands, floodplains, and fish and water resources. BPA has established a 30-day scoping period during which affected landowners, concerned citizens, special interest groups, local governments, and any other interested parties are invited to comment on the scope of the proposed EIS. Scoping will help BPA ensure that a full range of issues related to this proposal is addressed in the EIS, and also help identify significant or potentially significant impacts that my result from the proposed project. When completed, the Draft EIS will be circulated for review and comment, and BPA will hold at least one public comment meeting for the Draft EIS. BPA will consider and respond in the Final EIS to comments received on the Draft EIS. BPA's subsequent decision will be documented in a Record of Decision.

Maps and further information are available from BPA at the address above.

Issued in Portland, Oregon, on October 21, 2010.

Stephen J. Wright,

Administrator and Chief Executive Officer.

[FR Doc. 2010–27411 Filed 10–28–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–9–000]

Transcontinental Gas Pipe Line Company, LLC; Notice of Request Under Blanket Authorization

October 22, 2010.

Take notice that on October 14, 2010, Transcontinental Gas Pipe Line Company, LLC (Transco), Post Office Box 1396, Houston, Texas 77251–1396, filed a prior notice request pursuant to sections 157.205 and 157.216 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act (NGA) and Transco's blanket certificate issued in Docket No. CP82–426, for authorization to abandon an inactive section of pipeline. Specifically, Transco seeks to abandon, in place, an approximately 10.3-mile, 12-inch pipeline (Supply Lateral) located in offshore Louisiana extending from East Cameron Block 57 to Vermilion Block 22. Transco states that the Supply Lateral, which has been pigged and filled with sea water, will be cut, capped and the pipeline ends buried to the required 3-foot cover. Additionally, Transco avers that the proposed abandonment of the Supply Lateral will not involve the physical removal of any facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding the application should be directed to Nan Miksovsky, Transcontinental Gas Pipe Line Company, LLC, Post Office Box 1396, Houston, Texas 77251–1396, telephone no. (713) 215–3422.

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the

time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*. under the "e-Filing" link.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–27396 Filed 10–28–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM11–2–000]

Smart Grid Interoperability Standards; Notice of Technical Conference

October 22, 2010.

Take notice that the Federal Energy Regulatory Commission (Commission) will convene a conference on November 14, 2010, from 10:30 a.m. to 11:30 a.m. Eastern time in conjunction with the NARUC/FERC Collaborative on Smart Response (Collaborative), in the International D Ballroom at the Omni Hotel at CNN Center in Atlanta, GA. The technical conference will be open to the public and advance registration is not required. The Commission is holding this conference together with a number of State regulatory authorities that also are considering the adoption of Smart Grid Interoperability Standards (Standards) in their States.

On October 6, 2010, the National Institute of Standards and Technology (NIST) informed the Commission by letter of the posting of several groups of Standards which NIST identified as ready for consideration by regulators. Commissioners from State public utility commissions and the Commission will receive briefings on the first set of Standards posted by NIST at the technical conference.

Interested regulators may consider these Standards because they include emerging technology standards that may affect all electric facilities including generation, transmission, and distribution facilities as well as metering and communications at all levels. This technical conference provides an opportunity for both the Commission and interested State regulatory authorities to hear directly from NIST and others involved in the standards development process. The Commission will issue an agenda at a later date.

Transcripts of the technical conference will be made available. Instructions for obtaining transcripts will be published at a later date.

Prior to the technical conference other topics will be discussed by the Collaborative. Visit NARUC's Web site, *http://annual.narucmeetings.org/*, for detailed information on the agenda for that portion of the meeting, which begins at 8:15 a.m. Following the technical conference, from 11:30 a.m. until 12:30 p.m., the Collaborative will hold an informal, off-the-record discussion about the Standards, the Standards setting process, and the issues that their adoption may present. These portions of the meeting will also be open to the public, but will not be recorded.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 208–1659 (TTY), or send a FAX to (202) 208–2106 with the required accommodations.

For more information about this conference, please contact Sandra Waldstein at (202) 502–8092 or *sandra.waldstein@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–27405 Filed 10–28–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD10–7–000]

ILP Effectiveness Evaluation 2010; Additional Notice of Multi-Stakeholder Technical Conference on the Integrated Licensing Process

October 21, 2010.

As announced in the May 18, 2010, "Notice of Interviews, Teleconferences, Regional Workshops And Multi-Stakeholder Technical Conference On The Integrated Licensing Process," a technical conference will be held on November 3, 2010, from 11 a.m. (EST) to 3 p.m. (EST) in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. While we encourage interested parties to attend the technical conference in person, a limited number of phone lines will be available on a first-come-first-serve basis for interested parties to participate via teleconference. If you would like to participate via teleconference, e-mail Stephanie Obadia at *sobadia@kearnswest.com* by October 29, 2010 to receive the toll-free telephone number and password to join the teleconference. Also, please register to attend the technical conference by e-mailing Stephanie Obadia at *sobadia@kearnswest.com* by October 29, 2010.

For more information about this conference, please contact David Turner at (202) 502–6091 or *david.turner@ferc.gov*.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–27399 Filed 10–28–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD11–2–000]

Transmission Vegetation Management Practices; Supplemental Notice of Technical Conference

October 21, 2010.

On October 5, 2010 the Federal Energy Regulatory Commission announced that a Technical Conference on Transmission Vegetation Management Practices would be held on Tuesday, October 26, from 1 p.m. to 5 p.m. This staff-led conference will be held in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The conference will be open for the public to attend and advance registration is not required. Members of the Commission may attend the conference.

Attached is an agenda for this meeting. The conference will be Webcast. Anyone with Internet access who desires to listen to this event can do so by navigating to *http://www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to the webcast. The Capitol Connection provides technical support for webcasts and offers the option of listening to the meeting via phone-bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or call 703–993–3100.

Commission conferences are accessible under section 508 of the

Rehabilitation Act of 1973. For accessibility accommodations, please send an e-mail to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For more information about this conference, please contact: Sarah McKinley, Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8368, *sarah.mckinley@ferc.gov*.

Kimberly D. Bose,

Secretary.

Technical Conference on Transmission Vegetation Management Practices

Docket No. AD11–2–000

October 26, 2010

Agenda

1 p.m. Welcome and Opening Remarks

The purpose of the conference is to discuss current vegetation management programs and practices as required under the Commission-approved Reliability Standard FAC–003–1—Transmission Vegetation Management Program (TVMP).[1] Reliability Standard FAC–003–1 applies to all transmission lines operated at 200 kV and above, and to lower voltage lines designated as "critical to the reliability of the electric system in the region."[2]

Certain landowners and other affected parties have raised concerns about changes in vegetation management practices that utilities implemented following adoption of FAC–003–1. Because reliability of the Bulk-Power System is critical, the Commission is interested in obtaining a better understanding of the scope of any changes in vegetation management practices since FAC–003–1 was approved as mandatory and enforceable, and the extent to which such changes resulted from the requirements imposed under FAC–003–1. The Commission is also interested in obtaining a better understanding of the range of vegetation management practices used by transmission owners, and the reasons for selecting a given practice over alternatives.

Panelists (for Both Panels)

David Morrell—Utility Environmental Analyst, New York Public Service Commission.

Robert Novembri—Senior Event Investigator, North American Electric Reliability Corporation.

Randall H. Miller—Director, Vegetation Management, PacifiCorp.

David E. Schleicher, PE—Vice President—Transmission, PPL Electric Utilities.

Derek Vannice—Executive Director, Utility Arborist Association, International Society of Arboriculture.

Charles Goodman—Co-Founder, Indiana Tree Alliance.

Mark Gilliland—Chairperson, LORAX Working Group, Greenburgh Environmental Forum.

Representative from another State public service commission (invited).

1:10 p.m. Session 1—This session will explore the requirements and impact of mandatory Reliability Standard FAC–003–1.

- What is required by Reliability Standard FAC–003–1? What is its purpose? Who must comply and what facilities are subject to it?
- Are there corresponding or conflicting vegetation management requirements at the State level? How are such requirements developed and to what facilities do they apply?
- What are common methods used for vegetation management, and what are the benefits of each method?
- Why do utilities choose one method over another? Cost, benefit of one method over another, or for other reasons?
- What's contained in a typical TMVP? Are there different types of TVMPs so that a utility might have one for FAC–003–1 compliance and another for compliance with State/local vegetation management requirements? How is a TVMP created, implemented, and approved?
- What effect did mandatory Reliability Standard FAC–003–1 have on vegetation management practices? Was there a change in vegetation management practices post-June 18, 2007?
- Questions from Staff.

3 p.m. Break

3:15 p.m. Session 2—This session will focus on Right of Way (ROW) agreements and landowner concerns and possible solutions.

- What provisions are typically contained in a electric transmission line ROW agreement (*e.g.,* common provisions, rights and obligations of the utility and landowner)? How are these agreements developed/negotiated? Who has jurisdiction over them? Who is the arbiter of any disputes?
- Concerns raised by landowners regarding ROW maintenance, causes of disputes that say the utility blamed FERC for having to clear cut the right of way and remove trees that had long been in place.
- Landowner avenues for relief; can a landowner prevent ROW maintenance?
- Costs for vegetation management and who bears them? Are any such costs recovered in transmission tariffs subject to the Commission's jurisdiction? How are they reviewed by State PSC/PUCs?
- What is the impact, if any, of vegetation management practices on the siting of new (or upgraded) transmission lines? How can this impact be mitigated?
- Questions from Staff.
- Questions from the public.

4:45 Concluding Remarks

[FR Doc. 2010–27397 Filed 10–28–10; 8:45 am]

BILLING CODE 6717–01–P

[1] *See Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, FERC Stats. & Regs. ¶ 31,242, at P 695–735; *Order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 at P 95–99 (2007).

[2] Reliability Standard FAC–003–1, section A.4.3.

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R10–OAR–2010–0858; FRL–9218–7; EPA ICR No. 2020.05; OMB Control No. 2060–0558]

Agency Information Collection Activities; Proposed Collection; Comment Request; Federal Implementation Plans Under the Clean Air Act for Indian Reservations in Idaho, Oregon, and Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on May 31, 2011. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before December 28, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2010–0858, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments;
- *E-mail: spenillo.justin@epa.gov;*
- *Fax:* (206) 553–0110;
- *Mail:* Justin A Spenillo, Environmental Protection Agency

Region 10, Office of Air, Waste and Toxics (AWT–107), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101;

• *Hand Delivery:* Environmental Protection Agency, Region 10 Mailroom, 9th Floor, 1200 Sixth Avenue, Seattle, WA 98101. Attention: Justin A Spenillo, Office of Air, Waste and Toxics (AWT–107). Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R10–OAR–2010–0858. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. {For additional information about EPA's public docket visit the EPA Docket center homepage at *http://www.epa.gov/epahome/dockets.htm.*}

FOR FURTHER INFORMATION CONTACT: Justin A Spenillo, Office of Air, Waste and Toxics (AWT–107), Environmental Protection Agency Region 10, 1200 Sixth Avenue, Seattle, WA 98101; telephone number: (206) 553–6125; fax number: (206) 553–0110; e-mail address: *spenillo.justin@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–R10–OAR–2010–0858, which is available for online viewing at *http://www.regulations.gov,* or in person viewing during normal business hours at the Environmental Protection Agency Region 10, Office of Air, Waste and Toxics (AWT–107), 1200 Sixth Avenue, Seattle, WA.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA and 5 C.F.R. 1320.8(d)(1), EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES.**

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

[Docket ID No. EPA–R10–OAR–2010–0858.]

Affected entities: Entities potentially affected by this action include owners and operators of air emission sources in all industry groups and Tribal governments, located in the identified Indian reservations. Categories and entities potentially affected by this action are expected to include:

Category	NAICS [a]	Examples of regulated entities
Industry	4471	Gasoline station storage tanks and refueling.
	5614	Lumber manufacturer support.
	21211	Coal mining.
	31332	Surface coating operation.
	33712	Furniture manufacture.
	56221	Medical waste incinerator.
	115112	Repellent and fertilizer applications.
	211111	Natural gas plant.
	211111	Oil and gas production.
	211112	Fractionation of natural gas liquids.
	212234	Copper mining and processing.

Category	NAICS [a]	Examples of regulated entities
	212312	Stone quarrying and processing.
	212313	Stone quarrying and processing.
	212321	Sand and gravel production.
	221112	Power plant—coal-fired.
	221119	Power plant—biomass fueled.
	221119	Power plant—landfill gas fired.
	221210	Natural gas collection.
	221210	Natural gas pipeline.
	321113	Sawmill.
	321911	Window and door molding manufacturer.
	323110	Printing operations.
	323113	Surface coating operations.
	324121	Asphalt hot mix plants.
	325188	Elemental phosphorus plant.
	325188	Sulfuric acid plant.
	331314	Secondary aluminum production and extrusion.
	331492	Cobalt and tungsten recycling.
	332431	Surface coating operations.
	332812	Surface coating operations.
	421320	Concrete batching plant.
	422510	Grain elevator.
	422710	Crude oil storage and distribution.
	422710	Gasoline bulk plant.
	486110	Crude oil storage and distribution.
	486210	Natural gas compressor station.
	562212	Solid waste landfill.
	811121	Automobile refinishing shop.
	812320	Dry cleaner.
	111140	Wheat farming.
	111998	All other miscellaneous crop farming.
	115310	Support activities for forestry.
Federal government	924110	Administration of Air and Water Resources and Solid Waste Management Programs.
State/local/Tribal government.	924110	Administration of Air and Water Resources and Solid Waste Management Programs.

[a] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities potentially affected by this action.

Title: Federal Implementation Plans under the Clean Air Act for Indian Reservations in Idaho, Oregon, and Washington.

ICR number: EPA ICR No. 2020.05, OMB Control No. 2060–0558.

ICR status: This ICR is currently scheduled to expire on May 31, 2011. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: EPA promulgated Federal Implementation Plans (FIPs) under the Clean Air Act for Indian reservations located in Idaho, Oregon, and Washington in 40 CFR part 49 (70 FR 18074, April 8, 2005). The FIPs in the final rule, also referred to as the Federal Air Rules for Indian Reservations in Idaho, Oregon, and Washington (FARR), include information collection requirements associated with the fugitive particulate matter rule in § 49.126, the woodwaste burner rule in § 49.127; the rule for limiting sulfur in fuels in § 49.130; the rule for open burning in § 49.131; the rules for general open burning permits, agricultural burning permits, and forestry and silvicultural burning permits in §§ 49.132, 49.133, and 49.134; the registration rule in § 49.138; and the rule for non-Title V operating permits in § 49.139. EPA uses this information to manage the activities and sources of air pollution on the Indian reservations in Idaho, Oregon, and Washington. EPA believes these information collection requirements are appropriate because they will enable EPA to develop and maintain accurate records of air pollution sources and their emissions, track emissions trends and changes, identify potential air quality problems, allow EPA to issue permits or approvals, and ensure appropriate records are available to verify compliance with these FIPs. The information collection requirements listed above are all mandatory. Regulated entities can assert claims of business confidentiality and EPA will address these claims in accordance with the provisions of 40 CFR part 2, subpart B.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 3.69 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 1,694.

Frequency of response: Annual and on occasion.

Estimated total annual burden hours: 6,245.

Estimated total annual costs: $396,245. This includes an estimated labor cost of $396,245, and capital investment and operation and maintenance costs are assumed to be zero.

Are there changes in the estimates from the last approval?

There is an increase of 1,956 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This increase reflects adjustments to the burden estimates for this collection using consultation input, historical data, and experience with implementing the FARR. Some components of the burden estimates increased and some components decreased. In most cases, the burden estimates increased based on input from the source consultations. For some provisions the estimates of the number of respondents increased. Some estimates changed based on additional information EPA has gained through implementing the rules.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: October 22, 2010.

Richard Albright,

Director, Office of Air, Waste and Toxics.

[FR Doc. 2010–27453 Filed 10–28–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8993–4]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/*.

Weekly receipt of Environmental Impact Statements Filed 10/18/2010 Through 10/22/2010

Pursuant to 40 CFR 1506.9.

Notice

In accordance with Section 309(a) of the Clean Air Act, EPA is required to make its comments on EISs issued by other Federal agencies public. Historically, EPA has met this mandate by publishing weekly notices of availability of EPA comments, which includes a brief summary of EPA's comment letters, in the **Federal Register**. Since February 2008, EPA has been including its comment letters on EISs on its Web site at: *http://www.epa.gov/compliance/nepa/eisdata.html.* Including the entire EIS comment letters on the Web site satisfies the Section 309(a) requirement to make EPA's comments on EISs available to the public. Accordingly, on March 31, 2010, EPA discontinued the publication of the notice of availability of EPA comments in the **Federal Register**.

EIS No. 20100423, Draft EIS, HUD, WA, Yesler Terrace Redevelopment Project, Proposed Redevelopment of Yesler Terrace to Create a Mixed Income, Mixed-Use-Residential Community on a 28 Acre Site, to Better Serve Existing and Future Residents, City of Seattle, WA, Comment Period Ends: 12/13/2010, Contact: Ryan Moore 206–615–3548.

EIS No. 20100424, Draft EIS, USACE, TX, Rusk Permit Area, Proposes to Construct, Operate, and Reclaim Permit Area, Expansion of Existing South Hallsville No. 1 Mine. Issuance of Section 404 Permit, Rusk, Harrison and Panola Counties, TX, Comment Period Ends: 12/28/2010, Contact: Davin Messer 817–886–1744.

EIS No. 20100425, Draft EIS, USFS, AZ, Apache-Sitgreaves National Forests, Public Motorized Travel Management Plan, Proposes to Provide for a System of Roads, Trails, and Areas, Designated for Motorized Use, Apache, Coconino, Greenlee and Navajo Counties, AZ, Comment Period Ends: 12/13/2010, Contact: Tami Conner 918–333–6267.

EIS No. 20100426, Draft EIS, NRC, NJ, License Renewal of Nuclear Plants, Regarding Hope Creek Generating Station and Salem Nuclear Generating Station, Units 1 and 2, Supplement 45 to NUREG–1437, Lower Alloway Creek, Township, Salem County, NJ, Comment Period Ends: 12/17/2010, Contact: Leslie Perkins 301–415–2375.

EIS No. 20100427, Final EIS, NASA, VA, Wallops Flight Facility, Shoreline Restoration and Infrastructure Protection Program, Implementation, Wallops Island, VA, Wait Period Ends: 11/29/2010, Contact: Joshua A. Bundick 757–824–2319.

EIS No. 20100428, Second Draft Supplement, FHWA, WA, Alaskan Way Viaduct Replacement Project, Between S. Royal Brougham Way and Roy Street, To Protect Public Safety and Provide Essential Vehicle Capacity to and through downtown Seattle, Updated Information to 2004 DEIS and 2006 DSEIS, Seattle, WA, Comment Period Ends: 12/13/2010, Contact: Angela Freudenstein 206–805–2832.

EIS No. 20100429, Draft EIS, NHTSA, 00, Medium and Heavy-Duty Fuel Efficiency Improvement Program, Proposing Coordinated and Harmonized Fuel Consumption and Greenhouse Gas (GHG) Emissions Standards, United States, Comment Period Ends: 01/03/2011, Contact: Angel Jackson 202–366–0154.

Amended Notices

EIS No. 20100249, Draft EIS, FHWA, CA, Interstate 5 North Coast Corridor Project, Construction and Operation, Upgrade the Freeway with High Occupancy Vehicle/ Managed Lanes (HOV/ML), Auxiliary Lanes, Direct Access Ramps (DAR), and Possibly One General Purposes Lane, San Diego County, CA, Comment Period Ends: 11/22/2010, Contact: Cesar Perez 916–498–5065.

Revision to FR Notice Published 7/9/2010. Extending Comment Period from 10/07/2010 to 11/22/2010.

EIS No. 20100368, Draft EIS, USFS, WA, Pack and Saddle Stock Outfitter-Guide Special Use Permit Issuance, Okanogan, Chelah, and Skagit Counties, WA, Comment Period Ends: 11/22/2010, Contact: Jennifer Zbyszewski 509–996–4021.

Revision to FR Notice Published 09/17/2010: Extending Comment Period from 11/01/2010 to 11/22/2010.

Dated: October 26, 2010.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2010–27423 Filed 10–28–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2010–0828; FRL–9218–8]

Stakeholder Input; Listening Session Seeking Suggestions for Improving the Next National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges Incidental to the Normal Operation of Vessels

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is announcing plans to hold a "listening session" on December 15, 2010 to obtain suggestions from the public for improving the next Vessel General Permit (VGP). The listening session will be held in the EPA East Building, 1201 Constitution Ave., NW., Room 1153, Washington, DC 20004. The VGP is a Clean Water Act NPDES permit that authorizes, on a nationwide basis, discharges incidental to the normal operation of vessels as specified in Part 1.2.2 of the 2008 VGP. EPA seeks the views of the interested public on the requirements currently contained in the 2008 VGP, and any changes or additions recommended for the next VGP. The 2008 VGP expires on December 19, 2013 and EPA has begun the process of developing the next VGP.

DATES: The listening session will be held in Washington DC on December 15, 2010. If you would prefer to provide written comments, EPA is asking for comments or relevant information from the interested public to be submitted to the docket on or before December 31, 2010.

ADDRESSES: Submit your statements or input, identified by Docket ID No. EPA–HQ–OW–2010–0828 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ow-docket@epa.gov.* Attention Docket ID No. EPA–HQ–OW–2010–0828.
- *Mail:* Water Docket Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OW–2010–0828.
- *Hand Delivery:* Water Docket, EPA Docket Center, EPA West Building Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460, ID No. EPA–HQ–OW–2010–0828. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2010–0828. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Water Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: For further information on the "listening session," contact Shirley Fan at tel. 202–564–2425 or e-mail *CommericalVesselPermit@epa.gov*. For further information on the VGP, please contact Robin Danesi at 202–564–1846, Ryan Albert at (202) 564–0763 or e-mail *commercialvesselpermit@epa.gov*.

Public Listening Session: EPA will hold a public listening session to gather opinions from the public on changes or additions recommended for the next VGP. Written and oral statements will be accepted at the public listening session. Input generated from the public listening session will be compiled and archived in Docket ID No. EPA–HQ–OW–2010–0828 found at *http://www.regulations.gov.* The public listening session will begin with an EPA discussion of the background of the current VGP.

The date and time of the listening session is December 15, 2010, 9 a.m. to 5 p.m. The listening session will conclude early if all comments are heard. The listening session will be held at EPA HQ Office, EPA East Building, 1201 Constitution Ave., NW., Room 1153, Washington, DC 20004.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

Today's notice does not contain or establish any regulatory requirements. Rather, it announces a public listening session and seeks recommendations to improve the next VGP.

Today's notice will be of interest to the general public, State permitting agencies, other Federal agencies, technology vendors and owners or operators of non-recreational vessels that may have discharges incidental to their normal operation. These vessel types may include, but are not limited to, barges, tugs, cruise ships, commercial fishing vessels, tankers, and ferries.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not

contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the notice by docket number and other identifying information (subject heading, **Federal Register** date, and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a specific section number in the VGP.
- Explain why you agree or disagree; suggest alternatives; and provide reasons for your suggested alternatives.
- Describe any assumptions and provide any technical information and/or data that you used.
- Provide specific examples to illustrate your concerns and suggest alternatives.
- Explain your views as clearly as possible.

Make sure to submit your comments by the comment period deadline identified. You may submit your comments electronically, by mail, through hand delivery/courier, or in person by attending the public listening session being held on December 15, 2010.

II. Background

In order to help the public prepare for the listening session, the following background information is provided. Please note that the information presented in this section is in summary form; for more detail, please consult the VGP and supporting documents [available at *http://www.epa.gov/npdes/vessels*].

Summary of 2008 VGP Requirements

A. Who is Subject to the 2008 VGP?

Vessels operating in a capacity as a means of transportation in the waters of the U.S., except recreational vessels as defined in CWA section 502(25) and vessels of the Armed Forces within the meaning of CWA [section] 312, that have discharges incidental to their normal operation are eligible for coverage under the VGP. With respect to (1) commercial fishing vessels of any size as defined in 46 U.S.C. 2101 and (2) those non-recreational vessels that are less than 79 feet in length, the coverage under the VGP is limited to ballast water discharges only and these vessels generally do not require permit coverage for other discharges. "Waters of the U.S." is defined in EPA regulations to mean certain inland waters and the territorial sea, which extends three miles from the baseline. Note that the Clean Water Act (CWA) does not require NPDES permits for vessels or other floating craft operating as a means of transportation beyond the territorial seas, i.e., in the contiguous zone or ocean as defined by the CWA sections 502(9), (10). See CWA section 502(12) and 40 CFR 122.2 (definition of "discharge of a pollutant"). The VGP, therefore, does not apply in such waters.

B. What Does the 2008 VGP authorize?

The 2008 VGP addresses 26 vessel discharge streams by establishing effluent limits, including Best Management Practices (BMPs), to control the discharge of the waste streams and constituents found in those waste streams. The discharge streams eligible for coverage under this final permit as specified in Part 1.2.2 of the VGP are: Deck washdown and runoff and above water line hull cleaning; bilge water; ballast water; anti-fouling leachate from anti-fouling hull coatings; aqueous film forming foam (AFFF); boiler/economizer blowdown; cathodic protection; chain locker effluent; controllable pitch propeller hydraulic fluid and thruster hydraulic fluid and other oil sea interfaces including lubrication discharges from paddle wheel propulsion, stern tubes, thruster bearings, stabilizers, rudder bearings, azimuth thrusters, and propulsion pod lubrication; distillation and reverse osmosis brine; elevator pit effluent; firemain systems; freshwater layup; gas turbine wash water; graywater; motor gasoline and compensating discharge; non-oily machinery wastewater; refrigeration and air condensate discharge; seawater cooling overboard discharge; seawater piping biofouling prevention; small boat engine wet exhaust; sonar dome discharge, underwater ship husbandry; welldeck discharges; graywater mixed with sewage from vessels; and exhaust gas scrubber wash water discharge.

For each discharge type, among other things, the 2008 permit establishes effluent limits pertaining to the constituents found in the effluent, including BMPs designed to decrease the amount of constituents entering the waste stream. A vessel might not produce all of these discharges, but a vessel owner or operator is responsible for meeting the applicable effluent limits and complying with all the permit conditions for every listed discharge that the vessel produces.

C. Monitoring, Reporting, and Recordkeeping

The 2008 VGP requires a routine visual inspection and monitoring of all accessible areas of the vessel that the permit addresses. The routine self-inspection must be documented in the ship's logbook or other recordkeeping documentation. Analytical monitoring is required for certain types of discharges. The VGP also requires comprehensive annual vessel inspections, to ensure even the hard-to-reach areas of the vessel are inspected for permit compliance. If the vessel is placed in dry dock while covered under this permit, a dry dock inspection and report must be completed. Additional monitoring requirements are imposed on certain classes of vessels.

Vessel owner/operators are required to keep the following records on the vessel or accompanying tug as specified in Section 4.2 of the 2008 VGP: Owner/vessel information, voyage log, violation of any effluent limit, log of deficiencies and problems found during routine inspections conducted under Part 4.1.1 of the VGP, analytical results for all monitoring conducted under 4.1.2, log of findings from annual inspections conducted under Part 4.1.3, training records, and other records required by the 2008 permit. Vessels with ballast tanks are required to keep the following written information onboard: Total ballast water information; ballast water management; information on ballast water tanks that are to be discharged in waters subject to the 2008 permit or reception facility; and discharge of sediment.

The 2008 VGP requires a one-time permit report between 30 and 36 months after obtaining permit coverage. Vessel owner/operators must also report all instances of noncompliance with the VGP in an annual noncompliance report. If a noncompliance may endanger health or the environment, vessel owner/operators must report the noncompliance within 24 hours to the appropriate EPA Regional Office, and follow up with a written submission 5 days later.

D. Vessel Class-Specific Requirements

The 2008 VGP imposes additional requirements for 8 specific classes of vessels. These vessel types are medium cruise ships, large cruise ships, large ferries, barges, oil or petroleum tankers, research vessels, rescue boats, and vessels employing experimental ballast water treatment systems. The permit requirements are designed to address the discharges from features unique to those vessels, such as parking decks on

ferries and overnight accommodations for passengers on cruise ships.

III. Request for Public Input and Comment

Today's notice is being issued to inform the public that EPA is beginning the process of developing the next VGP and to solicit comment on recommended improvements. EPA is accepting information during the listening session scheduled for December 15, 2010 and/or by submission of written comments or relevant information in order to gain early public input on improvements recommended for the next VGP.

In addition to generally requesting recommended changes for any aspect of the next VGP, in order to maximize the quality of the next permit, EPA is specifically requesting comment on the following:

(1) Were parts of the 2008 VGP confusing? Do certain sections need to provide additional guidance?

(2) Are there any guidances, supporting documentation, or other communication strategies that you would recommend EPA develop to help vessel owner/operators better understand and comply with the next VGP? If so, please suggest your approaches.

(3) Did the 2008 VGP accurately identify and capture all the categories of discharges incidental to the normal operation of a vessel in the vessel universe? Are there additional discharge categories EPA should explore for the next VGP?

(4) Are there effluent limitations or best management practices in the 2008 VGP you would recommend revising and if so, what are your suggestions and why do you suggest making those revisions?

(5) Are there reporting, monitoring, and inspection requirements you would recommend revising, and if so, what are your suggestions? Are there additional forms or guidances EPA should consider in assisting permittees in meeting their reporting, monitoring, and inspections requirements?

(6) Did EPA accurately identify and capture additional requirements needed for specific vessel classes and if not, what are your suggestions? Are there additional specific vessel classes EPA should explore for the next VGP and why?

(7) Are there additional Federal, State, or international permits, rules, or guidances EPA should consider using to inform decisions for the next VGP and why?

Dated: October 21, 2010.

James A. Hanlon,

Director, Office of Wastewater Management.

[FR Doc. 2010–27452 Filed 10–28–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9218–9]

Science Advisory Board Staff Office; Notification of a Public Meeting of the Science Advisory Board Nutrient Criteria Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public meeting of the SAB Nutrient Criteria Review Panel. The Panel will review EPA's technical support document on development of numeric nutrient criteria for Florida's estuarine and coastal waters, and southern canals.

DATES: The meeting will be held on Monday, December 13, 2010, and Tuesday, December 14, 2010, beginning at 8:30 a.m. and ending no later than 5 p.m. (Eastern Time), each day.

ADDRESSES: The public meeting will be held at the Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain further information about this meeting may contact Ms. Stephanie Sanzone, Designated Federal Officer (DFO), EPA Science Advisory Board Staff Office (1400R), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; by telephone/voice mail: (202) 564–2067 or via e-mail at *sanzone.stephanie@epa.gov*. General information about the SAB is available on the SAB Web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2, notice is hereby given that the SAB Nutrient Criteria Review Panel will hold a public meeting to review a draft technical support document (TSD) being developed by the Office of Water (OW). The draft TSD will describe methods and approaches for developing numeric nutrient criteria for Florida's estuarine and coastal waters, downstream protection values in streams to protect those waters, and criteria for flowing waters in the south Florida region (including canals). The Nutrient Criteria Review Panel has been asked to review and comment on the scientific validity of the Agency's draft TSD.

The SAB was established pursuant to 42 U.S.C. 4365 to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under FACA. The SAB Nutrient Criteria Review Panel will provide advice through the chartered SAB. The SAB Panel will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Availability of Meeting Materials: The Charge to the Panel and the EPA draft technical support document will be available by mid-November, and will be posted on the SAB Web site at *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/FL%20Estuaries%20TSD?OpenDocument.* The EPA Office of Water technical contact for the draft TSD is Elizabeth Behl, at (202) 566–0788, or via e-mail at *behl.betsy@epa.gov.* The meeting agenda for December 13–14, 2010 and other meeting materials also will be posted on the SAB Web site prior to the meeting.

Procedures for Providing Public Input: Public comment for consideration by EPA's Federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a Federal advisory committee is different from the process used to submit comments to an EPA program office.

Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit comments for a Federal advisory committee to consider as it develops advice for EPA. They should send their comments directly to the Designated Federal Officer for the relevant advisory committee. Interested members of the public may submit relevant written information on the group conducting the activity or written or oral information for the Panel to consider on the topics of this review.

Oral Statements: In general, individuals or groups requesting an oral presentation at a public meeting will be limited to five minutes per speaker. Interested parties should contact Ms. Sanzone at the contact information provided above by December 6, 2010, to be placed on the public speaker list for the December 13–14, 2010 meeting.

Written Statements: Written statements should be received in the SAB Staff Office by December 6, 2010, so that the information can be made available to

the Panel for their consideration prior to the meeting. Written statements should be supplied to Ms. Sanzone in the following formats: One hard copy with original signature and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, MS Word, WordPerfect, MS PowerPoint, or Rich Text files). Submitters are asked to provide electronic versions of each document submitted with *and* without signatures, because the SAB Staff Office does not publish documents with signatures on its Web sites.

Accessibility: For information on access or services for individuals with disabilities, please contact Ms. Sanzone at (202) 564–2067, or via e-mail at *sanzone.stephanie@epa.gov,* preferably at least ten (10) days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: October 25, 2010.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2010–27430 Filed 10–28–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9218–3]

Notice of a Regional Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the City of Palmer (the City) Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Regional Administrator of EPA Region 10 is hereby granting a waiver request from the Buy American requirements of ARRA Section 1605(a) under the authority of Section 1605(b)(2) [manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality] to the City for the purchase and use of four rotary screw air compressors to provide aeration for the wastewater treatment facility's biological treatment lagoons. This is a project specific waiver and only applies to the use of the specified product for the ARRA project discussed in this notice. Any other ARRA recipient that wishes to use the same product must apply for a separate waiver based on project specific circumstances. These rotary compressors, which are supplied by Atlas Copco, are manufactured in England and Belgium, and meet the City's performance specifications and requirements. The Regional Administrator is making this determination based on the review and recommendations of the Grants & Strategic Planning Unit. The City has provided sufficient documentation to support their request. The Assistant Administrator of the Office of Administration and Resources Management has concurred on this decision to make an exception to Section 1605 of ARRA. This action permits the purchase of rotary screw air compressors for Palmer's activated wastewater treatment project that may otherwise be prohibited under Section 1605(a) of the ARRA.

DATES: *Effective Date:* October 20, 2010.

FOR FURTHER INFORMATION CONTACT: Bryan Fiedorczyk, CWSRF ARRA Program Management Analyst, Grants and Strategic Planning Unit, Office of Water & Watersheds (OWW), (206) 553–0506, U.S. EPA Region 10 (OWW–137), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.

SUPPLEMENTARY INFORMATION: In accordance with ARRA Section 1605(c) and OMB regulations at 2 CFR Part 176, Subpart B, the EPA hereby provides notice that it is granting a project waiver request of the requirements of Section 1605(a) of Public Law 111–5, Buy American requirements, to the City for the purchase and use of four Atlas Copco rotary screw air compressors manufactured outside of the U.S. The compressors will be incorporated as part of a wastewater treatment system upgrade project that includes lagoon insulation covers and a high-efficiency aeration system, which will reduce energy consumption by more than 40 percent. The City received $2,500,000 of ARRA funding through the Clean Water State Revolving Fund to complete this project. The City was unable to find a supplier that could provide American manufactured rotary screw compressors to meet the project specifications and performance requirements.

Section 1605 of the ARRA requires that none of the appropriated funds may be used for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project is produced in the United States unless a waiver is provided to the recipient by EPA. A waiver may be provided under Section 1605(b) if EPA determines that, (1) Applying these requirements would be inconsistent with public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

EPA has determined that the City's waiver request can be processed as timely even though the request was made after the construction contract was signed. Consistent with the direction of the OMB guidance at 2 CFR 176.120, EPA has evaluated the City's request to determine if the request constitutes a late request. EPA will generally regard waiver requests with respect to components that were specified in the bid solicitation or in a general/primary construction contract as "late" if submitted after the contract date. However, in this case EPA has determined that the City's request, though submitted after the contract date, may be processed as if it were timely. EPA has determined that the City needed to complete installation of insulated lagoon covers and complete testing to verify that the aeration system assumptions would be accurate. This data was necessary to justify the blower modifications that give rise to the need for the air compressors that are subject to this waiver. The applicant could not reasonably foresee they would need to request a waiver for a foreign made product before the data sampling was completed, which occurred after the contract was signed. EPA is authorized under 2 CFR 176.120 to process a waiver request as if it were timely if the need for the waiver was not reasonably foreseeable. Accordingly, EPA has evaluated the request as a timely request.

These manufactured goods will provide aeration for the City's treatment process. The City selected the specified rotary screw compressor technology because of: (1) Well documented energy-efficiency in wastewater operations; (2) necessary efficiency for energy modeling and to meet Green Project Reserve requirements; (3) oil free operation characteristics to reduce risk of pollutant discharges into a fish-bearing stream; (4) reduced life cycle cost of operation and maintenance; (5) small footprint required by project space constraints, and; (6) low noise emission characteristics. Additionally, in the bid specifications for the rotary screw blowers, the City identified performance testing criteria to evaluate power consumption of the aeration system's components, including the main drive motor, Variable Speed Drives (VSD), filters, *etc.* The specifications also required the

performance test to be witnessed by the senior wastewater treatment plant operator and an independent engineer.

Between February and July of 2010, the City's engineering consultant conducted an extensive investigation into all possible sources for American made rotary screw compressors. Based on the investigation, several companies were found to manufacture these machines, but only one, Universal Blower Pac (UBP), claimed to be able to meet the required performance specifications. EPA's national contractor prepared a technical assessment report dated August 26, 2010, based on the submitted waiver request. The report indicated that UBP confirmed the EE–Pac compressor could comply with performance specification requirements, and the EPA contractor concluded that no other U.S. manufacturers produced rotary screw blowers that would meet the project specifications. Over the course of several months, the City and engineering consultant attempted to gather energy performance and independent engineering testing results from UBP to validate UBP's claim that the EE–Pac compressor would meet the project specifications. Responses from UBP have not included the required information to consider system energy loss and independent engineering testing as identified in the performance specifications. Therefore, UBP's claim to produce an acceptable compressor does not meet the project specifications. Thus, the City has demonstrated due diligence in their efforts and were ultimately unable to identify an available domestic product of satisfactory quality.

The April 28 memorandum defines "reasonably available quantity" as the quantity of iron, steel, or relevant manufactured good is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design. Based on additional research by the City and EPA's national contractor, and to the best of the Region's knowledge at this time, the City attempted without success, to meet the Buy American requirements. Furthermore, the purpose of the ARRA provisions was to stimulate economic recovery by funding current infrastructure construction, not to delay projects that are already shovel ready by requiring entities, like the City, to halt construction pending manufacture of domestically produced goods. To further delay construction is in direct conflict with the most fundamental economic purposes of ARRA; to create or retain jobs.

The Grants and Strategic Planning Unit has reviewed this waiver request and has determined that the supporting documentation provided by the City is sufficient to meet the following criteria listed under Section 1605(b) and in the April 28 memorandum:

> Iron, Steel, and manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.

The basis for this project waiver is the authorization provided in Section 1605(b)(2), due to the lack of U.S. production of rotary screw air compressors, in order to meet the City's design specifications and performance requirements. The March 31, 2009, Delegation of Authority Memorandum provided Regional Administrators with the authority to issue exceptions to Section 1605 of ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients. Having established both a proper basis to specify the particular good required for this project, and that this manufactured good was not available from a producer in the United States, the City is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111–5 for the purchase and use of four rotary screw air compressors manufactured by Atlas Copco outside of the U.S. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers based on a finding under subsection (b).

Authority: Pub. L. 111–5, section 1605.

Dated: October 20, 2010.

Michelle L. Pirzadeh,

Acting Regional Administrator, EPA, Region 10.

[FR Doc. 2010–27429 Filed 10–28–10; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE U.S.

[Public Notice 2010–0049]

Agency Information Collection Activities: Final Collection; Comment Request

AGENCY: Export-Import Bank of the U.S.

ACTION: Submission for OMB Review and Comments Request.

Form Title: EIB 10–01A Long Term Transaction Questionnaire; EIB 10–01B Oil and Gas Company Questionnaire.

SUMMARY: The Export-Import Bank of the United States ("Ex-Im Bank") is the official export credit agency of the United States. Its mission is to create and sustain U.S. jobs by financing U.S. exports through direct loans, guarantees, insurance and working capital credit. The Consolidated Appropriations Act of 2010 (Pub. L. 111–117) ("the Act"), enacted December 16, 2009, provides for Ex-Im Bank's FY2010 budget authorization. As part of the U.S. government's efforts to strengthen sanctions against Iran, the Act contains language prohibiting Ex-Im Bank from:

> Authoriz[ing] any new guarantee, insurance, or extension of credit for any project controlled by an energy producer or refiner that continues to: (A) Provide Iran with significant refined petroleum resources; (B) materially contribute to Iran's capability to import refined petroleum resources; or (C) allow Iran to maintain or expand, in any material respect, its domestic production of refined petroleum resources, including any assistance in refinery construction, modernization, or repair.

See Sec. 7043 of the Act.

The Act is effectively immediately and applies to all authorizations Ex-Im Bank may make with FY2010 funds.

DATES: Comments should be received on or before November 29, 2010 to be assured of consideration.

ADDRESSES: Comments maybe submitted electronically on *http://www.regulations.gov* or by mail to Office of Management & Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20038 attn: OMB 3048–0030.

SUPPLEMENTARY INFORMATION:

Titles and Form Number: EIB 10–01A Long Term Transaction Questionnaire; EIB 10–01B Oil and Gas Company Questionnaire.

OMB Number: 3048–0030.

Type of Review: Regular.

Need and Use: This is a new collection to ensure compliance with the Consolidated Appropriations Act of 2010 (Pub. L. 111–117), enacted December 16, 2009.

Sharon A. Whitt,

Agency Clearance Officer.

[FR Doc. 2010–27428 Filed 10–28–10; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update Listing of Financial Institutions in Liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as "of record" notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *http://www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: October 25, 2010.

Federal Deposit Insurance Corporation.

Pamela Johnson,

Regulatory Editing Specialist.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC ref. No.	Bank name	City	State	Date closed
10306	First Arizona Savings, a FSB	Scottsdale	AZ	10/22/2010
10300	First Bank of Jacksonville	Jacksonville	FL	10/22/2010
10301	First Suburban National Bank	Maywood	IL	10/22/2010
10302	Hillcrest Bank	Overland Park	KS	10/22/2010
10303	Progress Bank of Florida	Tampa	FL	10/22/2010
10304	The First National Bank of Barnesville	Barnesville	GA	10/22/2010
10305	The Gordon Bank	Gordon	GA	10/22/2010

[FR Doc. 2010–27374 Filed 10–28–10; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY: *Background.* Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act (PRA) Submission, supporting statements and approved collection of information instrument(s) 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.

FOR FURTHER INFORMATION CONTACT: Acting Federal Reserve Board Clearance Officer —Cynthia Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Report

Report title: Compensation and Salary Surveys.

Agency form number: FR 29a,b.

OMB control number: 7100–0290.

Frequency: FR 29a, annually; FR 29b, on occasion.

Reporters: Employers considered competitors for Federal Reserve employees.

Estimated annual reporting hours: FR 29a, 210 hours; FR 29b, 50 hours.

Estimated average hours per response: FR 29a, 6 hours; FR 29b, 1 hour.

Number of respondents: 45.

General description of report: This information collection is authorized pursuant sections 10(4) and 11(1) of the Federal Reserve Act, (12 U.S.C. section 244 and 248(1)) and is voluntary. These statutory provisions grant the Federal Reserve Board independence to determine its employees' salaries and compensation. Individual respondent data are regarded as confidential under the Freedom of Information Act (FOIA) (5 U.S.C 552 (b)(4) and (6)). Any aggregate reports produced are not subject to FOIA exemptions.

Abstract: The Federal Reserve along with other Financial Institutions Reforms, Recovery and Enforcement Act of 1989 (FIRREA) agencies [1] conduct the FR 29a survey jointly. The FR 29b is collected by Board staff. The FR 29a,b collect information on salaries, employee compensation policies, and other employee programs from employers that are considered competitors of the Federal Reserve Board. The data from the surveys primarily are used to determine the appropriate salary structure and salary adjustments for Federal Reserve Board employees so that salary ranges are competitive with other organizations offering similar jobs.

Current Actions: On August 17, 2010, the Federal Reserve published a notice in the **Federal Register** (75 FR 50763) seeking public comment for 60 days on the extension, without revision, of the Compensation and Salary Surveys (FR 29a,b). The comment period for this notice expired on October 18, 2010. The Federal Reserve did not receive any comments.

Board of Governors of the Federal Reserve System, October 26, 2010.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–27372 Filed 10–28–10; 8:45 am]

BILLING CODE 6210–01–P

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

[1] For purposes of this proposal the FIRREA agencies consist of: the Federal Reserve Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the National Credit Union Administration, the Commodities Futures Trading Commission, the Farm Credit Administration, and the Securities and Exchange Commission.

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 November 15, 2010.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Marcelo L. Sacomori, London, England; to acquire additional voting shares of Granville Bancshares, Inc., and thereby indirectly acquire additional voting shares of Granville National Bank, both of Granville, Illinois and Sheridan State Bank, Sheridan, Illinois.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Larry L. Bingham,* Baxter Springs, Kansas; Ross C. Hartley, Teton Village, Wyoming; Fred Mitchelson, Pittsburg, Kansas; and Bob L. Robinson, Baxter Springs, Kansas; to acquire control of American BancShares, Inc., and thereby indirectly acquire control of American Bank of Baxter Springs, both of Baxter Springs, Kansas.

Board of Governors of the Federal Reserve System, October 26, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–27375 Filed 10–28–10; 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 application also will 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 November 26, 2010.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. JRMB II, Inc., Lawton, Oklahoma; to become a bank holding company by acquiring 82.97 percent of the voting shares of J.R. Montgomery Bancorporation, Lawton, Oklahoma, and thereby indirectly acquire voting shares of City National Bank and Trust Company, Lawton, Oklahoma, and Fort Sill National Bank, Fort Sill, Oklahoma.

Board of Governors of the Federal Reserve System, October 26, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–27377 Filed 10–28–10; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Implementation of Section 5001 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) for Adjustments to the Fourth Quarter of Fiscal Year 2010 Federal Medical Assistance Percentage Rates for Federal Matching Shares for Medicaid and Title IV–E Foster Care, Adoption Assistance and Guardianship Assistance Programs

AGENCY: Office of the Secretary, DHHS.

ACTION: Notice.

SUMMARY: This notice provides the adjusted Federal Medical Assistance Percentage (FMAP) rate for the fourth quarter of Fiscal Year 2010 (FY10) as required under Section 5001 of the American Recovery and Reinvestment Act of 2009 (ARRA). Section 5001 of the ARRA provides for temporary increases in the FMAP rates to provide fiscal relief to States and to protect and maintain State Medicaid and certain other assistance programs in a period of economic downturn. The increased FMAP rates apply during a recession adjustment period that was originally defined in ARRA as the period beginning October 1, 2008 and ending December 31, 2010. Public Law 111–226 amended ARRA to extend the recession adjustment period to June 30, 2011 and to extend the hold harmless provision that prevents a State's FMAP rate from decreasing due to a lower unemployment rate from the calendar quarter ending before July 1, 2010 to the calendar quarter ending before January 1, 2011. Public Law 111–226 also provided for a phase-down of the general FMAP increase in the last two quarters of the extended recession adjustment period, and changed the methodology for calculating the unemployment adjustment for those quarters.

DATES: *Effective Date:* The percentages listed are for the fourth quarter of FY10 beginning July 1, 2010 through September 30, 2010.

A. Background

The FMAP is used to determine the amount of Federal matching for specified State expenditures for assistance payments under programs under the Social Security Act ("the Act"). Sections 1905(b) and 1101(a)(8)(B) of the Act require the Secretary of Health and Human Services to publish the FMAP rates each year. The Secretary calculates the percentages using formulas in sections 1905(b) and 1101(a)(8)(B), and statistics from the Department of Commerce of average income per person in each State and for the Nation as a whole. The percentages must be within the upper and lower limits given in section 1905(b) of the Act. The percentages to be applied to the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands are specified separately in the Act, and thus are not based on the statutory formula that determines the percentages for the 50 States.

Section 1905(b) of the Act specifies the formula for calculating the FMAP as follows:

The FMAP for any State shall be 100 per centum less the State percentage; and the State percentage shall be that percentage which bears the same ratio to 45 per centum as the square of the per capita income of such State bears to the square of the per capita income of the continental United States (including Alaska) and Hawaii; except that (1) the FMAP shall in no case be less than

50 per centum or more than 83 per centum, and (2) the FMAP for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa shall be 50 per centum.

Section 4725 of the Balanced Budget Act of 1997 amended section 1905(b) to provide that the FMAP for the District of Columbia for purposes of titles XIX (Medicaid) and XXI (CHIP) shall be 70 percent. The Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) (Pub. L. 110–275) amended the FMAP applied to the District of Columbia for maintenance payments under title IV–E programs to make it consistent with the 70 percent Medicaid match rate.

Section 5001 of Division B of the ARRA provides for a temporary increase in FMAP rates for Medicaid and title IV–E Foster Care, Adoption Assistance and Guardianship Assistance programs. The purpose of the increases to the FMAP rates is to provide fiscal relief to States and to protect and maintain State Medicaid and certain other assistance programs in a period of economic downturn, referred to as the "recession adjustment period." The recession adjustment period is defined as the period beginning October 1, 2008 and ending December 31, 2010. Public Law 111–226 extends the recession adjustment period to June 30, 2011.

B. Calculation of the Increased FMAP Rates Under ARRA

Section 5001 of the ARRA specifies that the FMAP rates shall be temporarily increased for the following: (1) Maintenance of FMAP rates for FY09, FY10, and the first three calendar quarters of FY11, so that the FMAP rate will not decrease from the prior year, determined by using as the FMAP rate for the current year, the greater of any prior fiscal year FMAP rates between 2008–2010 or the rate calculated for the current fiscal year; (2) in addition to any maintenance increase, the application of a general percentage point increase in each State's FMAP of 6.2 percentage points (decreasing during the last two quarters of the extended recession adjustment period); and (3) an additional percentage point increase based on the State's increase in unemployment during the recession adjustment period. The resulting increased FMAP cannot exceed 100 percent. Each State's FMAP will be recalculated each fiscal quarter beginning October 2008. Availability of certain components of the increased FMAP is conditioned on States meeting statutory programmatic requirements, such as the maintenance of effort requirement, which are not part of the calculation process.

Expenditures for which the increased FMAP is not available under title XIX include expenditures for disproportionate share hospital payments, certain eligibility expansions, services received through an IHS or Tribal facility (which are already paid at a rate of 100 percent and therefore not subject to increase), and expenditures that are paid at an enhanced FMAP rate. The increased FMAP is available for expenditures under part E of title IV (including Foster Care, Adoption Assistance and Guardianship Assistance programs) only to the extent of a maintenance increase (hold harmless), if any, and the general percentage point increase. The increased FMAP does not apply to other parts of title IV, including part D (Child Support Enforcement Program).

For title XIX purposes only, for each qualifying State with an unemployment rate that has increased at a rate above the statutory threshold percentage, ARRA provides additional relief above the general percentage point increase in FMAP through application of a separate increase calculation. For those States, the FMAP for each qualifying State is increased by the number of percentage points equal to the product of the State matching percentage (as calculated under section 1905(b) and adjusted if necessary for the maintenance of FMAP without reduction from the prior year, and after applying half of the general percentage point increase in the Federal percentage) and the applicable percent determined from the State unemployment increase percentage for the quarter.

The unemployment increase percentage for calendar quarters other than the last two quarters of the recession adjustment period is equal to the number of percentage points (if any) by which the average monthly unemployment rate for the State in the most recent previous 3-consecutive-month period for which data are available exceeds the lowest average monthly unemployment rate for the State for any 3-consecutive-month period beginning on or after January 1, 2006.

A State qualifies for additional relief based on an increase in unemployment if that State's unemployment increase percentage is at least 1.5 percentage points. A different but related methodology for an unemployment adjustment applies for the last two quarters of the recession adjustment period.

The applicable percent is: (1) 5.5 percent if the State unemployment increase percentage is at least 1.5 percentage points but less than 2.5 percentage points; (2) 8.5 percent if the State unemployment increase percentage is at least 2.5 percentage points but less than 3.5 percentage points; and (3) 11.5 percent if the State unemployment increase percentage is at least 3.5 percentage points.

If the State's applicable percent is less than the applicable percent for the preceding quarter, then the higher applicable percent shall continue in effect for any calendar quarter beginning on or after January 1, 2009 and ending before January 1, 2011, as amended by Public Law 111–226. This hold harmless provision is not in effect from January 1, 2011 to June 30, 2011.

Under section 5001(b)(2) of ARRA, Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and America Samoa were given the option to make a special one-time election between (1) a 30 percent increase in their cap on Medicaid payments (as determined under subsections (f) and (g) of section 1108 of the Act), or (2) applying the general 6.2 percentage point increase in the FMAP plus a 15 percent increase in the cap on Medicaid payments. There is no quarterly unemployment adjustment for territories. All territories and the Commonwealth of the Northern Mariana Islands elected the 30 percent increase in their spending cap on Medicaid payments; therefore there is no recalculation of their FMAP rate.

D. Adjusted FMAPs for the Fourth Quarter of FY2010

ARRA adjustments to FMAPs are shown by State in the accompanying table. The hold harmless FY10 FMAP is the higher of the original FY08, FY09, or FY10 FMAP. The 6.2 percentage point increase is added to the hold harmless FY10 FMAP. The unemployment adjustment is calculated according to the unemployment tier and added to the hold harmless FY10 FMAP with the 6.2 percentage point increase.

For the fourth quarter of FY10, the unemployment tier is determined by comparing the average unemployment rate for the three consecutive months preceding the start of the fiscal quarter to the lowest consecutive 3-month average unemployment rate beginning January 1, 2006. If the State's applicable percent is less than the applicable percent for the third quarter of FY10, then the higher applicable percent shall continue for the fourth quarter of FY10.

As indicated in the August 4, 2009 **Federal Register** Notice that proposed the methodology for the FMAP unemployment adjustment calculations (74 FR 38630), we utilize annual updates to the historical Bureau of

Labor Statistics (BLS) data to make changes to the States' lowest unemployment rate beginning with the fourth quarter FMAP rate adjustment calculation each year. As such, the rates calculated and presented in the accompanying table are based on updates to the historical BLS data used to determine the States' average lowest unemployment rate for any 3 consecutive months beginning January 1, 2006.

FOR FURTHER INFORMATION CONTACT: Carrie Shelton or Thomas Musco, Office of Health Policy, Office of the Assistant Secretary for Planning and Evaluation, Room 447D—Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, (202) 690–6870.

(Catalog of Federal Domestic Assistance Program Nos. 93.778: Medical Assistance Program; 93.658: Foster Care; 93.659: Adoption Assistance; 93.090: Guardianship Assistance)

Dated: September 22, 2010.

Kathleen Sebelius,

Secretary.

ARRA ADJUSTMENTS TO FMAP Q4 FY10

State	Hold harmless FY10	Hold harmless FY10 FMAP with 6.2% pt increase	4th Quarter FY10 unemployment tier	4th Quarter FY10 unemployment adjustment	4th Quarter FY10 FMAP unemployment adjustment	4th Quarter FY10 FMAP unemployment hold harmless
Alabama	68.01	74.21	11.5	3.32	77.53	77.53
Alaska	52.48	58.68	5.5	2.44	61.12	62.46
Arizona	66.20	72.40	11.5	3.53	75.93	75.93
Arkansas	72.94	79.14	8.5	2.04	81.18	81.18
California	50.00	56.20	11.5	5.39	61.59	61.59
Colorado	50.00	56.20	11.5	5.39	61.59	61.59
Connecticut	50.00	56.20	11.5	5.39	61.59	61.59
Delaware	50.21	56.41	11.5	5.37	61.78	61.78
Dist. of Columbia	70.00	76.20	11.5	3.09	79.29	79.29
Florida	56.83	63.03	11.5	4.61	67.64	67.64
Georgia	65.10	71.30	11.5	3.66	74.96	74.96
Hawaii	56.50	62.70	11.5	4.65	67.35	67.35
Idaho	69.87	76.07	11.5	3.11	79.18	79.18
Illinois	50.32	56.52	11.5	5.36	61.88	61.88
Indiana	65.93	72.13	11.5	3.56	75.69	75.69
Iowa	63.51	69.71	8.5	2.84	72.55	72.55
Kansas	60.38	66.58	8.5	3.10	69.68	69.68
Kentucky	70.96	77.16	11.5	2.98	80.14	80.14
Louisiana	72.47	78.67	8.5	2.08	80.75	81.48
Maine	64.99	71.19	11.5	3.67	74.86	74.86
Maryland	50.00	56.20	11.5	5.39	61.59	61.59
Massachusetts	50.00	56.20	11.5	5.39	61.59	61.59
Michigan	63.19	69.39	11.5	3.88	73.27	73.27
Minnesota	50.00	56.20	8.5	3.99	60.19	61.59
Mississippi	76.29	82.49	11.5	2.37	84.86	84.86
Missouri	64.51	70.71	11.5	3.72	74.43	74.43
Montana	68.53	74.73	11.5	3.26	77.99	77.99
Nebraska	60.56	66.76	5.5	2.00	68.76	68.76
Nevada	52.64	58.84	11.5	5.09	63.93	63.93
New Hampshire	50.00	56.20	8.5	3.99	60.19	61.59
New Jersey	50.00	56.20	11.5	5.39	61.59	61.59
New Mexico	71.35	77.55	11.5	2.94	80.49	80.49
New York	50.00	56.20	11.5	5.39	61.59	61.59
North Carolina	65.13	71.33	11.5	3.65	74.98	74.98
North Dakota	63.75	69.95	0	0.00	69.95	69.95
Ohio	63.42	69.62	11.5	3.85	73.47	73.47
Oklahoma	67.10	73.30	11.5	3.43	76.73	76.73
Oregon	62.74	68.94	11.5	3.93	72.87	72.87
Pennsylvania	54.81	61.01	11.5	4.84	65.85	65.85
Rhode Island	52.63	58.83	11.5	5.09	63.92	63.92
South Carolina	70.32	76.52	11.5	3.06	79.58	79.58
South Dakota	62.72	68.92	5.5	1.88	70.80	70.80
Tennessee	65.57	71.77	11.5	3.60	75.37	75.37
Texas	60.56	66.76	11.5	4.18	70.94	70.94
Utah	71.68	77.88	11.5	2.90	80.78	80.78
Vermont	59.45	65.65	8.5	3.18	68.83	69.96
Virginia	50.00	56.20	11.5	5.39	61.59	61.59
Washington	51.52	57.72	11.5	5.22	62.94	62.94
West Virginia	74.25	80.45	11.5	2.60	83.05	83.05
Wisconsin	60.21	66.41	11.5	4.22	70.63	70.63
Wyoming	50.00	56.20	11.5	5.39	61.59	61.59

[FR Doc. 2010–27412 Filed 10–28–10; 8:45 am]
BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

NIAID Blue Ribbon Panel Meeting on Adjuvant Discovery and Development

Notice is hereby given that the National Institute of Allergy and Infectious Diseases (NIAID), a component of the National Institutes of Health (NIH) of the Department of Health and Human Services (DHHS), will convene a Blue Ribbon Panel to provide expertise in developing a strategic plan and research agenda for the discovery, development and clinical evaluation of adjuvants for use with preventive vaccines. NIAID has developed a draft Strategic Plan and Research Agenda for Adjuvant Discovery and Development, which summarizes the current status of research in the field of preventive vaccine adjuvants, identifies gaps in knowledge and capabilities, and defines NIAID's goals for the continued discovery, development and application of adjuvants for human vaccines that protect against infectious disease. The Panel will review the draft Strategic Plan and Research Agenda and recommend ways the NIAID can enhance its adjuvant research programs.

DATES: November 17–18, 2010.

ADDRESSES: The meeting location is: Rockville—Hilton Hotel (Roosevelt Room), 1750 Rockville Pike, Rockville, MD 20850.

FOR FURTHER INFORMATION CONTACT: Ms. Grace Tollini-Farrell, 301–496–7551.

Dated: October 21, 2010.

Daniel Rotrosen,

Director, Division of Allergy, Immunology and Transplantation, NIAID, National Institutes of Health.

[FR Doc. 2010–27317 Filed 10–28–10; 8:45 am]
BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program (NTP); Office of Liaison, Policy and Review; Meeting of the NTP Board of Scientific Counselors: Amended Notice

AGENCY: National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health, HHS.

ACTION: Extension of public comment period.

SUMMARY: The NTP announces an amended date for submission of written public comments for the November 30–December 1, 2010 meeting of the NTP Board of Scientific Counselors (BSC). Information regarding the BSC meeting was published on October 19, 2010, in the **Federal Register** (75 FR 201) and is available on the BSC meeting page (*http://ntp.niehs.nih.gov/go/165*). The guidelines and deadlines published in this **Federal Register** notice still apply, except that the deadline for submission of written comments is extended to November 16, 2010.

DATES: The BSC meeting will be held on November 30–December 1, 2010. The deadline for submission of written comments and for pre-registration to attend the meeting, including registering to present oral comments, is November 16, 2010.

ADDRESSES: The BSC meeting will be held in the Rodbell Auditorium, Rall Building at the NIEHS, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709. Public comments on all agenda topics and any other correspondence should be submitted to Dr. Lori White, Designated Federal Officer for the BSC, NTP Office of Liaison, Policy and Review, NIEHS, P.O. Box 12233, K2–03, Research Triangle Park, NC 27709; telephone: 919–541–9834; fax: 919–541–0295; *whiteld@niehs.nih.gov.* Courier address: NIEHS, 530 Davis Drive, Room K2136, Morrisville, NC 27560.

FOR FURTHER INFORMATION CONTACT: Dr. Lori D. White (telephone: 919–541–9834 or *whiteld@niehs.nih.gov*).

Dated: October 21, 2010.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. 2010–27424 Filed 10–28–10; 8:45 am]
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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10319]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Pre-Existing Condition Insurance Plan Program Solicitation and Contractor's Proposal Package; *Use:* The Department of Health and Human Services (HHS) is requesting a renewal of this package by the Office of Management and Budget (OMB); specifically, HHS is now seeking a three-year approval for this collection. On March 23, 2010, the President signed into law H.R. 3590, the Patient Protection and Affordable Care Act (Affordable Care Act), Public Law 111–148. Section 1101 of the law establishes a "temporary high risk health insurance pool program" (which has been named the Pre-Existing Condition Insurance Plan, or PCIP) to provide health insurance coverage to currently uninsured individuals with pre-existing conditions. The law authorizes HHS to carry out the program directly or through contracts with States or private, non-profit entities.

This package renewal is requested as a result of a possible transition in administration of the program from a Federally-run to a State administered program. A State who originally decided to have HHS administer the program in their State may in the future notify HHS of their desire to administer the Pre-Existing Condition Plan (PCIP) program. PCIP is also referred to as the temporary qualified high risk insurance pool program, as it is called in the Affordable Care Act, but we have adopted the term PCIP to better describe the program and avoid confusion with the existing State high risk pool programs. *Form Number:* CMS–10319 (OMB#: 0938–1085); *Frequency:* Occasionally; *Affected Public:* State governments; *Number of Respondents:* 2; Total *Annual Responses:* 2; *Total Annual Hours:* 2,992. (For policy questions regarding this collection contact Laura Dash at 301–492–4296. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by *December 28, 2010:*

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address:

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: October 26, 2010.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2010–27470 Filed 10–28–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Cancer Trials Support Unit (CTSU) Public Use Forms and Customer Satisfaction Surveys (NCI)

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on July 13, 2010 (75 FR 39950) and allowed 60-days for public comment. There have been no public comments. Additionally, the 30-day **Federal Register** was published on September 13, 2010. The purpose of this notice is to allow an additional 30 days for public comment to the revisions. The National Institutes of Health 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.

Proposed Collection: Title: Cancer Trial Support Unit (CTSU). *Type of Information Collection Request:* Existing Collection in Use Without an OMB Number. *Need and Use of Information Collection:* CTSU collects annual surveys of customer satisfaction for clinical site staff using the CTSU Help Desk and the CTSU Web site. An ongoing user satisfaction survey is in place for the Oncology Patient Enrollment Network (OPEN). User satisfaction surveys are compiled as part of the project quality assurance activities and used to direct improvements to processes and technology. In addition, the CTSU collects standardized forms to process site regulatory information, changes to membership, patient enrollment data, and routing information for case report forms. This questionnaire adheres to The Public Health Service Act, Section 413 (42 U.S.C. 285a–2) authorizes CTEP to establish and support programs to facilitate the participation of qualified investigators on CTEP-supported studies, and to institute programs that minimize redundancy among grant and contract holders, thereby reducing overall cost of maintaining a robust treatment trials program. Based on a conversation with the Office of Management and Budget on October 17, 2010, the burden table has been revised to take into account future submissions of a generic data transmittal forms (*see* Attachment 1gg in the Table below). It was agreed that the generic forms will be finalized and submitted in the future as non-substantive change requests for OMB clearance as needed. *Frequency of Response:* The help desk and Web site survey are collected annually. The OPEN survey is ongoing. The form submissions vary depending on the purpose of the form and the activity of the local site. *Affected Public:* CTSU's target audience is staff members at clinical sites and CTEP-supported programs. Respondent and burden estimates are listed in the Table below. The annualized burden is estimated to be 34,802 hours and the annualized cost to respondents is estimated to be $946, 601. There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Attach No.	Section/form or survey title	Use metrics/ month— # respond	Estimated time for site to complete (minutes)	Estimated burden (minutes/ hours)	Frequency of response	Total annual usage/annual burden hours
Regulatory/Roster						
1a	CTSU IRB/Regulatory Approval Transmittal Form.	9,000	2	0.03	12.00	3,600
1b	CTSU IRB Certification Form	8,500	10	0.17	12.00	17,000
1c	CTSU Acknowledgement Form	500	5	0.08	12.00	500
1d	Optional Form 1—Withdrawal from Protocol Participation Form.	50	5	0.08	12.00	50
Roster Forms						
1e	CTSU Roster Update Form	50	2–4	0.07	12.00	40
1f	CTSU Radiation Therapy Facilities Inventory Form.	20	30	0.50	12.00	120
Drug shipment						

Attach No.	Section/form or survey title	Use metrics/ month— # respond	Estimated time for site to complete (minutes)	Estimated burden (minutes/ hours)	Frequency of response	Total annual usage/annual burden hours
1g	CTSU IBCSG Drug Accountability Form	11	5–10	0.17	12.00	22
1h	CTSU IBCSG Transfer of Investigational Agent Form.	3	20	0.33	12.00	12
Data Management						
1i	Site Initiated Data Update Form (generic)	100	5–10	0.17	12.00	200
1j	N0147 CTSU Data Transmittal Form	1000	5–10	0.17	12.00	2,000
1k	Site Intimated Data Update Form (DUF), Protocol: NCCTG N0147*.	75	5–10	0.17	12.00	150
1l	TAILORX/PACCT 1 CTSU Data Transmittal Form.	2100	5–10	0.17	12.00	4,200
1m	Data Clarification Form	650	15–20	0.33	12.00	2,600
1n	Unsolicited Data Modification Form (UDM), Protocol: TAILORx/PACCT1.	75	5–10	0.17	12.00	150
1o	Z4032 CTSU Data Transmittal Form	50	5–10	0.17	12.00	100
1p	Z1031 CTSU Data Transmittal Form	50	5–10	0.17	12.00	100
1q	Z1041 CTSU Data Transmittal Form	50	5–10	0.17	12.00	100
1r	Z6051 CTSU Data Transmittal Form	75	5–10	0.17	12.00	150
1s	RTOG 0834 CTSU Data Transmittal Form*	60	5–10	0.17	12.00	120
1t	CTSU 7868 Data Transmittal Form	50	5–10	0.17	12.00	100
1u	Site Initiated Data Update Form, protocol 7868	10	5–10	0.17	12.00	20
1v	MC0845(8233) CTSU Data Transmittal*	50	5–10	0.17	12.00	100
1w	8121 CTSU Data Transmittal Form*	100	5–10	0.17	12.00	200
1x	Site Initiated Data Update Form, Protocol 8121.	10	5–10	0.17	12.00	20
1y	USMCI 8214/Z6091: CTSU Data Transmittal .. *In Development	50	5–10	0.17	12.00	100
1z	USMCI 8214/Z6091 Crossover Request/ Checklist Transmittal Form.	5	5–10	0.17	12.00	10
Patient Enrollment						
1aa	CTSU Patient Enrollment Transmittal Form	600	5–10	0.17	12.00	1,200
1bb	CTSU P2C Enrollment Transmittal Form	30	5–10	0.17	12.00	60
1cc	CTSU Transfer Form	40	5–10	0.17	12.00	80
Administrative						
1dd	CTSU System Account Request Form	50	15–20	0.33	12.00	200
1ee	CTSU Request for Clinical Brochure	35	10	0.17	12.00	70
1ff	CTSU Supply Request Form	130	5–10	0.17	12.00	260
1gg	CTSU Generic Data Transmittal Form	500	5–10	0.17	12.00	1000.00
Surveys/Web Forms						
2	CTSU Web Site Customer Satisfaction Survey	250	10–15	0.2500	1.00	63
3	CTSU Helpdesk Customer Satisfaction Survey	300	10–15	0.2500	1.00	75
4	CTSU OPEN Survey	120	10–15	0.2500	1.00	30
Annual Totals						
.....	21,770					34,802

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Attention: NIH Desk Officer, Office of Management and Budget, at *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Michael Montello, Pharm. D., CTEP, 6130 Executive Blvd., Rockville, MD 20852, call non-toll-free number 301–435–9206 or e-mail your request, including your address to: *montellom@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: October 21, 2010.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2010–27330 Filed 10–28–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0378]

Draft Compliance Policy Guide Sec. 690.800 *Salmonella* in Animal Feed; Availability; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to December 31, 2010, the comment period for a notice of availability of a draft compliance policy guide (CPG) that appeared in the **Federal Register** of August 2, 2010 (75 FR 45130). In the document, FDA requested comments on its proposal that certain criteria should be considered in recommending enforcement action against animal feed or feed ingredients that are adulterated due to the presence of *Salmonella.* The Agency is taking this action in response to requests for an extension to allow interested persons additional time to submit comments.

DATES: Submit either electronic or written comments by December 31, 2010.

ADDRESSES: Submit electronic comments on the draft CPG to *http://www.regulations.gov.* Submit written comments on the draft CPG to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kim Young, Center for Veterinary Medicine (HFV–230), Food and Drug Administration, 7519 Standish Pl., MPN–4, rm. 106, Rockville, MD 20855, 240–276–9200, e-mail: *Kim.young@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 2, 2010 (75 FR 45130), FDA published a notice of availability of a draft CPG with a 90-day comment period to request comments on its proposal that certain criteria should be considered in recommending enforcement action against animal feed or feed ingredients that are adulterated due to the presence of *Salmonella.* The Agency has received a request for a 60-day extension of the comment period for the draft CPG. The request conveyed concern that the current 90-day comment period does not allow sufficient time to develop a meaningful or thoughtful response to the draft CPG. FDA has considered the request and is extending the comment period for the draft CPG for 60 days, until December 31, 2010.

II. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments on 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 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.

Dated: October 26, 2010.

Dara Corrigan,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 2010–27448 Filed 10–28–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health (ABRWH or Advisory Board), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), and pursuant to the requirements of 42 CFR 83.15(a), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

Board Public Meeting Times and Dates (All Times Are Mountain Time)

8:15 a.m.–5:15 p.m., November 16, 2010.

8:15 a.m.–5:15 p.m., November 17, 2010.

8:15 a.m.–12 p.m., November 18, 2010

Public Comment Times and Dates (All Times Are Mountain Time)

5:30 p.m.–7 p.m.,* November 16, 2010.

5:30 p.m.–6:30 p.m.,* November 17, 2010.

*Please note that the public comment periods may end before the times indicated, following the last call for comments. Members of the public who wish to provide public comments should plan to attend public comment sessions at the start times listed.

Place: Hilton Santa Fe Historic Plaza, 100 Sandoval Street, Santa Fe, New Mexico; Phone: 505–988–2811; Fax: 505–986–6439. Audio Conference Call via FTS Conferencing. The USA toll-free dial-in number is 1–866–659–0537 with a pass code of 9933701.

Status: Open to the public, limited only by the space available. The meeting space accommodates approximately 150 people.

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program (EEOICP) Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines which have been promulgated by the Department of Health and Human Services (HHS) as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program, and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2011.

Purpose: This Advisory Board is charged with (a) Providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose

reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters To Be Discussed: The agenda for the Advisory Board meeting includes: NIOSH Program Update and Program Evaluation; Department of Labor (DOL) Program Update; Department of Energy (DOE) Program Update; Los Alamos National Laboratory Work Group Update; Board Session to Discuss Evaluating Exposure Potential for Radiological Materials in Minor Quantities or Uses; SEC petitions for: Linde Ceramics Plant (Tonawanda, New York), General Electric Company (Evendale, Ohio), Dow Chemical (Madison, Illinois), Simonds Saw and Steel Company (Lockport, New York), Hangar 481 of Kirkland Airforce Base (Albuquerque, New Mexico), BWX Technologies (Lynchburg, Virginia), and Texas City Chemicals Inc. (Texas City, Texas); SEC Petition Status Updates; SEC Class Definition Assessment Report; Subcommittee and Work Group Reports; and Board Work Sessions.

The agenda is subject to change as priorities dictate.

In the event an individual cannot attend, written comments may be submitted in accordance with the redaction policy provided below. Any written comments received will be provided at the meeting and should be submitted to the contact person below well in advance of the meeting.

Policy on Redaction of Board Meeting Transcripts (Public Comment): (1) If a person making a comment gives his or her name, no attempt will be made to redact that name; (2) NIOSH will take reasonable steps to ensure that individuals making public comment are aware of the fact that their comments (including their name, if provided) will appear in a transcript of the meeting posted on a public Web site. Such reasonable steps include: (a) A statement read at the start of each public comment period stating that transcripts will be posted and names of speakers will not be redacted; (b) A printed copy of the statement mentioned in (a) above will be displayed on the table where individuals sign up to make public comments; (c) A statement such as outlined in (a) above will also appear with the agenda for a Board Meeting when it is posted on the NIOSH Web site; (d) A statement such as in (a) above will appear in the **Federal Register** Notice that announces Board and Subcommittee meetings; (3) If an individual in making a statement reveals personal information (*e.g.,* medical information) about themselves that information will not usually be redacted. The NIOSH FOIA coordinator will, however, review such revelations in accordance with the Freedom of Information Act and the Federal Advisory Committee Act and if deemed appropriate, will redact such information; (4) All disclosures of information concerning third parties will be redacted; and (5) If it comes to the attention of the DFO that an individual wishes to share information with the Board but objects to doing so in a public forum, the DFO will work with that individual, in accordance with the Federal Advisory Committee Act, to find a way that the Board can hear such comments.

Contact Person for More Information: Theodore Katz, M.P.A., Designated Federal Officer, NIOSH, CDC, 1600 Clifton Road, NE., Mailstop E–20, Atlanta, Georgia 30333, telephone: (513) 533–6800, toll free: 1 (800) CDC–INFO, e-mail: *ocas@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: October 22, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–27455 Filed 10–28–10; 8:45 am]

BILLING CODE 4163–18–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, PA–07–030: Program Project: Membrane Fusion.

Date: November 23, 2010.

Time: 11 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Nitsa Rosenzweig, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1102, MSC 7760, Bethesda, MD 20892, (301) 435–1747. *rosenzweign@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 21, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–27325 Filed 10–28–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Clinical Proteomic Technologies for Cancer Initiative Research.

Date: December 13–15, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Adriana Stoica, PhD, Scientific Review Officer, Special Review &

Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Ste 703, Rm 7072, Bethesda, MD 20892–8329, 301–594–1408, *Stoicaa2@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 25, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–27410 Filed 10–28–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Childhood Lead Poisoning Prevention (ACCLPP)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the CDC, National Center for Environmental Health (NCEH) announces the following committee meeting:

Dates and Times:

November 16, 2010, 8:30 a.m.–5 p.m.
November 17, 2010, 8:30 a.m.–5 p.m.
November 18, 2010, 8:30 a.m.–12 p.m.

Place: The Westin Atlanta North at Perimeter, Seven Concourse Parkway, Atlanta, Georgia 30328, (770) 395–3900.

Status: This meeting is open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: The Committee provides advice and guidance to the Secretary; the Assistant Secretary for Health; and the Director, CDC, regarding new scientific knowledge and technological developments and their practical implications for childhood lead poisoning prevention efforts. The committee also reviews and reports regularly on childhood lead poisoning prevention practices and recommends improvements in national childhood lead poisoning prevention efforts.

Matters to be Discussed: The agenda will include discussions on: (1) The New York State Childhood Lead Poisoning Program; (2) the Educational Intervention Workgroup; (3) the Laboratory Workgroup; (4) the Consumer Product Workgroup; (5) the National Health and Nutrition Examination Survey (NHANES) Blood Lead Estimate; (6) the Blood Lead Level of "Concern"; (7) Federal agency updates; (8) discussion of CDC recommendations for lead in water; and (9) The Lead in Water Panel: The State of the Science panel discussions.

Opportunities will be provided during the meeting for oral comments.

Agenda items are subject to change as priorities dictate.

For Further Information Contact: Claudine Johnson, Program Operation Assistant, Lead Poisoning Prevention Branch, Division of Environmental Emergency Health Services, NCEH, CDC, 4770 Buford Highway, NE., Mailstop F–60, Atlanta, GA 30341, telephone 770 488–3629, fax 770 488–3635.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: October 22, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–27365 Filed 10–28–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Glial Lineage in Disease Progression.

Date: November 22, 2010.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852.

Contact Person: Norman Chang, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–496–1485, *changn@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 22, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–27331 Filed 10–28–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, December 6, 2010, 8 a.m. to December 6, 2010, 5 p.m., Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852 which was published in the **Federal Register** on October 15, 2010, 75FR63494.

This notice is amending the start and end times of the meeting from 8 a.m.–5 p.m. to 8:30 a.m.–6 p.m. The meeting is closed to the public.

Dated: October 22, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–27328 Filed 10–28–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Centers for Advanced Diagnostics and Experimental Therapeutics in Lung Diseases (CADET I).

Date: November 18–19, 2010.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Keary A Cope, PhD, Scientific Review Officer, Office of Scientific Review, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7190, Bethesda, MD 20892–7924, (301) 435–2222, *copeka@mail.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Common Pathogenetic Mechanisms of Lung Cancer and COPD.

Date: November 19, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Robert T. Su, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7202, Bethesda, MD 20892–7924, 301–435–0297, *sur@mail.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Next Generation Genetic Association Studies.

Date: November 19, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications,

Place: Westin BWI (Baltimore), 1100 Old Elkridge Landing Road, Baltimore, MD 21090.

Contact Person: David A Wilson, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7204, Bethesda, MD 20892–7924, 301–435–0299, *wilsonda2@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: October 22, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–27319 Filed 10–28–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, Office of Infectious Diseases (BSC, OID)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

Time and Date: 10:30 a.m.–12 p.m., November 15, 2010.

Place: Teleconference.

Status: Open to the public, the toll free dial in number is 1(800)369–1755 with a pass code of 8481618.

Purpose: The BSC, OID, shall advise the Secretary, Department of Health and Human Services; the Director, CDC; the Director, OID; and the Directors of the National Center for Immunization and Respiratory Diseases, the National Center for Emerging and Zoonotic Infectious Diseases, and the National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention, CDC, concerning strategies, goals, and priorities for the programs and research within the national centers and monitor the overall strategic direction and focus of OID and the national centers.

Matters To Be Discussed: The meeting will involve the presentation of a draft document being developed to advance CDC's infectious disease priorities. A subsequent meeting to solicit further discussion and input on the document from the board is currently scheduled for December 6, 2010 and will be announced at a future date.

Requests for a copy of the draft document may be sent to *ddidinput@cdc.gov* prior to the teleconference.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Robin Moseley, CDC, OID, 1600 Clifton Road, NE., Mailstop D–10, Atlanta, Georgia 30333, telephone (404) 639–4461.

The Director, Management and Analysis Services Office, has been delegated the authority to sign the **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: October 22, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–27462 Filed 10–28–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meetings

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of meetings of the Sleep Disorders Research Advisory Board.

The meetings 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: Sleep Disorders Research Advisory Board.

Date: November 12, 2010.

Time: 3 p.m. to 5 p.m.

Agenda: To discuss sleep research programs and sleep research strategic planning. Public meeting observers should call 1–800–779–2608 to access the teleconference and the observer passcode is 7989226. Public meeting observers should send comments or questions for this meeting to the National Center on Sleep Disorders Research by e-mail *mt2d@nih.gov* or fax 301–480–3557.

Place: National Institutes of Health, 6701 Rockledge Drive, Suite 10170, Bethesda, MD 20892 (Telephone Conference Call.)

Contact Person: Michael J Twery, PhD, Director, National Center on Sleep Disorders Research, Division of Lung Diseases, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Suite 10038, Bethesda, MD 20892–7952, 301–435–0199, *twerym@nhlbi.nih.gov.*

Name of Committee: Sleep Disorders Research Advisory Board.

Date: December 10, 2010.

Time: 8:30 a.m. to 4 p.m.

Agenda: To discuss sleep research programs and sleep research strategic planning.

Place: National Institutes of Health, Building 31, 31 Center Drive, C–Wing, Conference Room 6, Bethesda, MD 20892.

Contact Person: Michael J Twery, PhD, Director, National Center on Sleep Disorders Research, Division of Lung Diseases, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Suite 10038, Bethesda, MD 20892–7952,301–435–0199, *twerym@nhlbi.nih.gov.*

Any interested person may file written comments with the committee by

forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nhlbi.nih.gov/meetings/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: October 22, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–27318 Filed 10–28–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Pediatric Oncology Subcommittee of the Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Pediatric Oncology Subcommittee of the Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 30, 2010, from 8 a.m. to 5:30 p.m.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31, the Great Room, White Oak Conference Center (Rm. 1503), Silver Spring, MD 20993–0002.

Contact Person: Nicole Vesely, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, e-mail: *nicole.vesely@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512542. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On November 30, 2010, information will be presented regarding pediatric development plans for four products that were either recently approved by FDA or, are in late stage development for an adult oncology indication. The subcommittee will consider and discuss issues relating to the development of each product for pediatric use and provide guidance to facilitate the formulation of Written Requests for pediatric studies, if appropriate. The four products under consideration are: (1) Crizotinib, manufactured by Pfizer, Inc.; (2) pralatrexate, manufactured by Allos Therapeutics, Inc.; (3) denosumab, manufactured by Amgen, Inc.; and (4) eribulin, manufactured by Eisai Inc.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. Written submissions may be made to the contact person on or before November 15, 2010. Oral presentations from the public will be scheduled between approximately 9:15 a.m. to 9:30 a.m., 11:15 a.m. to 11:30 a.m., 2:05 p.m. to 2:20 p.m., and 4:10 p.m. to 4:25 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before November 4, 2010. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by November 5, 2010.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Nicole Vesely at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 25, 2010.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–27322 Filed 10–28–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5383–N–24]

Notice of Proposed Information Collection for Public Comment; FY 2010 Capital Fund Community and Education Training Facilities NOFA

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: December 28, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Colette Pollard, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4160, Washington, DC 20410–5000; telephone 202.402.3400, (this is not a toll-free number) or e-mail Ms. Pollard at *Colette_Pollard@hud.gov.* Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. (Other than the HUD USER information line and TTY numbers, telephone numbers are not toll-free.)

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street, SW., (L'Enfant Plaza, Room 206), Washington, DC 20410; telephone 202–402–4109, (this is not a toll-free number). Additional information is provided at *http://www.hud.gov/offices/pih/programs/ph/cn/docs/2010-pre-notice.pdf.*

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended). This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (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 collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: FY 2010 Capital Fund Community and Education Training Facilities NOFA.

OMB Control Number: 2577–0268.

Description of the need for the information and proposed use: The Department of Housing and Urban Development Appropriations Act, 2010 (Pub. L. 111–117, enacted on December 16, 2009) permits the HUD Secretary to use up to $40,000,000 of the Capital Fund appropriations for grant funding to develop facilities to provide early childhood education, adult education, and/or job training programs for public housing residents based on an identified need. PHAs may use funds for construction of new facilities, rehabilitation of existing facilities, or rehabilitation of vacant space. These facilities will offer comprehensive, integrated supportive services to help public housing residents achieve better educational and economic outcomes resulting in long-term economic self-sufficiency. The actual Notice of Funding Availability (NOFA) will contain the selection criteria for awarding Capital Fund Education and Training Community Facilities grants and specific requirements that will apply to selected grantees.

Agency form number, if applicable: HUD–2990 and HUD–50075.1.

Members of affected public: Local governments, public housing authorities, nonprofits, and for-project developers that apply jointly with a public entity.

Estimation of the total number of hours needed to prepare the information collection including number of respondents: The estimated number of respondents is 300 annually with one response per respondent. The average number for each response is 47.75 hours, for a total reporting burden of 14,325 hours.

Status of the proposed information collection: Extension of approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: October 21, 2010.

Merrie Nichols-Dixon,

Acting Deputy Assistant Secretary Office of Policy, Programs, and Legislative Initiatives.

[FR Doc. 2010–27445 Filed 10–28–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5375–N–42]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

DATES: *Effective Date: October 29, 2010.*

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7262, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: October 21, 2010.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. 2010–27072 Filed 10–28–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

National Environmental Policy Act (NEPA) Implementing Procedures

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of Change to the Departmental Manual.

SUMMARY: The U.S. Department of the Interior (DOI) has amended its Departmental Manual (DM) by adding a new chapter to provide supplementary requirements for implementing the National Environmental Policy Act (NEPA) within the Department's Office

of Native Hawaiian Relations. The change to the DM was published in the **Federal Register** on December 3, 2009. No comments were received on the DM change. By publishing these changes in the **Federal Register**, DOI intends to promote greater transparency and accountability to the public and enhance cooperative conservation.

DATES: The Departmental Manual change will take effect on November 29, 2010.

FOR FURTHER INFORMATION CONTACT: Ka'i'ini Kaloi, Director; Office of Native Hawaiian Relations; 1849 C Street, NW.; Washington, DC 20240. Telephone: 202–513–0712. E-mail: *kaiini.kaloi@ios.doi.gov.*

SUPPLEMENTARY INFORMATION: Congress passed the Hawaiian Homes Commission Act (HHCA) in 1921, creating the Commission and designating approximately 200,000 acres available to rehabilitate the indigenous Hawaiian population by providing them with access to farm and homestead land. Under section 204(3) of the HHCA, ch. 42, 42 Stat. 110 (1921), all available lands were to become Hawaiian home lands under control of the Commission, provided that "such lands should assume the status of the Hawaiian home lands until the Commission, with the approval of the Secretary of the Interior makes the selection and gives notice thereof to the Commissioner of Public Lands." 42 Stat. 110 (1921).

Thirty-three years later, Congress passed the Act of June 18, 1954, ch. 319, 68 Stat. 262, which amended the HHCA, adding a new subsection 204(4) "to permit the [Commission] to exchange available lands as designated by the Act, for public land of equal value." H.R. Rep. No. 1517, 83d Cong., 2d Sess. (1954); S. Rep. No. 1486, 83d Cong., 2d Sess. 2 (1954). The new section 204(4), provided that "the Commission may with the approval of the Governor (Governor approval no longer required) and the Secretary of the Interior, in purposes of this Act, exchange title to available lands for land publicly owned, of equal value." 68 Stat. 262 (1954). Hence, it was clear Congress intended the Commission would not have the authority to consummate any land exchange without secretarial approval.

After Hawaii was admitted to the Union in 1959, the responsibility for the administration of the Hawaiian home lands was transferred to the State of Hawaii. Section 4 of the Hawaiian Admission Act, Public Law 86–3, 73 Stat. 5 (1959), 48 U.S.C. nt. Prec. § 491 (1982) provides: "[a]s a compact with the United States relating to the management and disposition of the Hawaiian Home lands, the Hawaiian Homes Commission Act, 1920, as amended, shall be adopted as a provision of the Constitution of such State." Thus, secretarial approval remained necessary before the Commission was empowered to conduct land exchanges.

In 1995, Congress again iterated its intent to have the Secretary provide oversight of land exchanges occurring under the auspices of the HHCA. The Hawaiian Home Lands Recovery Act of 1995 (HHLRA), Public Law 104–42, 109 Stat. 357, gave oversight responsibilities to the Secretary of the Department of Interior to ensure that real property under the HHCA is, among other things, administered in a manner which best serves the interests of the beneficiaries.

The words of section 204(3) of the HHCA make clear that a land exchange is not valid until it has been approved by the Secretary (or his designee), but does not suggest that the Secretary is required to approve every land exchange placed before him. Indeed, the Secretary must at a minimum, satisfy himself that either of the purposes set forth in section 204(3) is met (*i.e.,* that the exchange would consolidate Homes Commission holdings, or that it would help to "better effectuate" the purposes of the Homes Commission Act), and that the lands proposed for exchange are "of an equal value". Each of these elements requires the exercise of judgment, most particularly the element of equal value for land valuations can be highly subjective and land appraisals are understood to represent an art, not a science. Because the discharge of the responsibility placed on the Secretary is discretionary and not ministerial, approval of a land exchange is subject to NEPA. In general, section 102(2)(C) of NEPA, 42 U.S. C. 4332(2)(C) provides that a "detailed statement" must be prepared whenever a major Federal action will have a significant impact on the quality of the human environment. Accordingly, the new chapter to provide supplementary requirements for implementing NEPA within the Department's Office of Native Hawaiian Relations includes: A definition of the Office of Native Hawaiian Relations' NEPA responsibilities; guidance to the Department of Hawaiian Home Lands as to when NEPA is triggered and who maintains responsibility for compliance; guidance as to when an action would normally require the development of an Environmental Impact Statement (EIS) or Environmental Assessment (EA); and guidance as to when an action can be categorically excluded under NEPA.

Compliance Statements

1. Regulatory Planning and Review (E.O. 12866)

This document is not a significant policy change and the Office of Management and Budget has not reviewed this Departmental Manual change under Executive Order 12866.

We have made the assessments required by E.O. 12866 and have determined that this departmental policy: (1) Will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities.

(2) Will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) Does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) Does not raise novel legal or policy issues.

2. Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

3. Small Business Regulatory Enforcement Fairness Act (SBREFA)

This departmental manual change is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. OMB made the determination that this departmental manual change:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

4. Unfunded Mandates Reform Act

This departmental manual change does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

5. Takings (E.O. 12630)

Under the criteria in Executive Order 12630, this departmental manual change does not have significant takings implications. A takings implication assessment is not required.

6. Federalism (E.O. 13132)

Under the criteria in Executive Order 13132, this departmental manual change does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement. A Federalism summary impact statement is not required.

7. Consultation with Indian Tribes (E.O. 13175)

Under the criteria in Executive Order 13175, we have evaluated this departmental manual change and determined that it has no potential effects on Federally recognized Indian Tribes since Native Hawaiians are not a Federally recognized Indian Tribe.

8. National Environmental Policy Act

The CEQ does not direct agencies to prepare a NEPA analysis or document before establishing agency procedures that supplement the CEQ regulations for implementing NEPA. Agency NEPA procedures are procedural guidance to assist agencies in the fulfillment of agency responsibilities under NEPA, but are not the agency's final determination of what level of NEPA analysis is required for a particular proposed action. The requirements for establishing agency NEPA procedures are set forth at 40 CFR 1505.1 and 1507.3. The determination that establishing agency NEPA procedures does not require NEPA analysis and documentation has been upheld in *Heartwood, Inc.* v. *U.S. Forest Service,* 73 F. Supp. 2d 962, 972–73 (S.D. III. 1999), aff'd 230 F.3d 947. 954–55 (7th Cir. 2000).

9. Paperwork Reduction Act

This change to the U.S. Department of the Interior Departmental Manual does not contain information collection requirements, and a submission under the Paperwork Reduction Act (PRA) is not required.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

For the reasons stated in the preamble, the Department of the Interior has amended its Departmental Manual by adding a new chapter to provide supplementary requirements for implementing provisions of 516 DM 1 through 4 within the Department's Office of Native Hawaiian Relations, as set forth below:

PART 516: NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

Chapter 7: MANAGING THE NEPA PROCESS—OFFICE OF NATIVE HAWAIIAN RELATIONS

7.1 Purpose. This Chapter provides supplementary requirements for implementing provisions of the Department's NEPA regulations at 43 CFR part 46 and the provisions of 516 DM 1 through 3 [previously 516 DM 1 through 6] within the Department's Office of Native Hawaiian Relations.

7.2 NEPA Responsibility.

A. The Director of the Office of Native Hawaiian Relations (OHR) is responsible for NEPA compliance for OHR activities.

B. The Director of the Office of Native Hawaiian Relations, in conjunction with the Office of Environmental Policy Compliance, provides direction and oversight for environmental activities, including the implementation of NEPA.

C. The OHR may request the Department of Hawaiian Home Lands (DHHL) to assist in preparing NEPA documentation for a proposed action submitted by the Secretary.

7.3 Guidance to DHHL.

A. Actions Proposed by the Department of Hawaiian Home Lands requiring OHR or other Federal approval.

(1) OHR retains sole responsibility and discretion in all NEPA compliance matters related to the proposed action, although the Director of OHR may request the DHHL to assist in preparing all NEPA documentation.

B. Actions proposed by the Department of Hawaiian Home Lands not requiring Federal approval, funding, or official actions, are not subject to NEPA requirements.

7.4 Actions Normally Requiring an Environmental Assessment (EA) or Environmental Impact Statement (EIS) if these activities are connected to a land exchange requiring the Secretary's approval.

A. The following actions require preparation of an EA or EIS:

(1) Actions not categorically excluded; or

(2) Actions involving extraordinary circumstances as provided in 43 CFR Part 46.215.

B. Actions not categorically excluded or involving extraordinary circumstances as provided in 43 CFR Part 46.210, will require an EA when:

(1) An EA will be used in deciding whether a finding of no significant impact is appropriate, or whether an EIS is required prior to implementing any action.

(2) The action is not being addressed by an EIS.

C. If an EA is prepared, it will comply with the requirements of 43 CFR part 46 subpart D.

D. The following actions normally require the preparation of an Environmental Impact Statement (EIS):

(1) Proposed water development projects which would inundate more than 1,000 acres of land, or store more than 30,000 acre-feet of water, or irrigate more than 5,000 acres of undeveloped land.

(2) Construction of a treatment, storage or disposal facility for hazardous waste or toxic substances.

(3) Construction of a solid waste facility.

E. If an EIS is prepared, it will comply with the requirements of 43 CFR part 46 subpart E.

7.5 Categorical Exclusion. In addition to the actions listed in the Departmental categorical exclusions specified in section 43 CFR 46.210, the following action is categorically excluded unless any of the extraordinary circumstances in section 43 CFR 46.215 apply, thus requiring an EA or an EIS. This activity is a single, independent action not associated with larger, existing or proposed complexes or facilities.

A. Approval of conveyances, exchanges and other transfers of land or interests in land between DHHL and an agency of the State of Hawaii or a Federal agency, where no change in the land use is planned.

[FR Doc. 2010–27356 Filed 10–28–10; 8:45 am]

BILLING CODE 4310–RG–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management, Regulation and Enforcement

[Docket No. BOEM–2010–0050]

BOEMRE Information Collection Activity: 1010–0043, Oil and Gas Well-Workover Operations, Extension of a Collection; Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), Interior.

ACTION: Notice of extension of an information collection (1010–0043).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that

we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR 250, subpart F, "Oil and Gas Well-Workover Operations," and related documents. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATE: Submit written comments by November 29, 2010.

ADDRESSES: Submit comments by either fax (202) 395–5806 or e-mail (*OIRA_DOCKET@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0043). Please also submit a copy of your comments to BOEMRE by any of the means below.

- Electronically: go to *http://www.regulations.gov*. In the entry titled "Enter Keyword or ID," enter docket ID BOEM–2010–0050 then click search. Follow the instructions to submit public comments and view supporting and related materials available for this collection. BOEMRE will post all comments.
- E-mail *cheryl.blundon@boemre.gov*. Mail or hand-carry comments to: Department of the Interior; Bureau of Ocean Energy Management, Regulation and Enforcement; Attention: Cheryl Blundon; 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference "ICR 1010–0043" in your comment and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch, (703) 787–1607. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulation that requires the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, subpart F, Oil and Gas Well-Workover Operations.

OMB Control Number: 1010–0043.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to manage the mineral resources of the OCS. Such rules and regulations will apply to all operations conducted under a lease, right-of-use and easement, or pipeline right-of-way. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

Section 5(a) of the OCS Lands Act requires the Secretary to prescribe rules and regulations "to provide for the prevention of waste, and conservation of the natural resources of the Outer Continental Shelf, and the protection of correlative rights therein" and to include provisions "for the prompt and efficient exploration and development of a lease area." These authorities and responsibilities are among those delegated to BOEMRE to ensure that operations on the OCS will meet statutory requirements; provide for safety and protection of the environment; and result in diligent exploration, development, and production of OCS leases.

This information collection request addresses the regulations at 30 CFR 250, Subpart F, Oil and Gas Well-Workover Operations and the associated supplementary Notices to Lessees and Operators (NTLs) that BOEMRE issues to clarify, supplement, or provide additional guidance on some aspects of our regulations.

Responses are mandatory. No questions of a sensitive nature are asked. BOEMRE protects information considered proprietary according to the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2), and 30 CFR 250.197, "Data and information to be made available to the public or for limited inspection."

BOEMRE District Supervisors use the information collected to analyze and evaluate planned well-workover operations to ensure that these operations result in personnel safety and protection of the environment. They use this evaluation in making decisions to approve, disapprove, or to require modification to the proposed well-workover operations. Specifically, BOEMRE uses the information collected to:

- Review log entries of crew meetings to verify that safety procedures have been properly reviewed.
- Review well-workover procedures relating to hydrogen sulfide (H_2S) to ensure the safety of the crew in the event of encountering H_2S.
- Review well-workover diagrams and procedures to ensure the safety of well-workover operations.
- Verify that the crown block safety device is operating and can be expected to function and avoid accidents.
- Verify that the proposed operation of the annular preventer is technically correct and will provide adequate protection for personnel, property, and natural resources.
- Verify the reasons for postponing blowout preventer (BOP) tests, verify the state of readiness of the equipment and ascertain that the equipment meets safety standards and requirements, ensure that BOP tests have been conducted in the manner and frequency to promote personnel safety and protect natural resources. Specific testing information must be recorded to verify that the proper test procedures were followed.
- Assure that the well-workover operations are conducted on well casing that is structurally competent.

Frequency: On occasion; varies by section.

Description of Respondents: Potential respondents comprise Federal OCS oil, gas, or sulphur lessees and/or operators.

Estimated Reporting and Recordkeeping Hour Burden: The estimated annual hour burden for this information collection is a total of 24,719 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250	Reporting requirement	Hour burden	Average No. of annual responses	Annual burden hours (rounded)
	Requests			
602	Request exceptions prior to moving well-workover equipment.	1	766 requests	766

Citation 30 CFR 250	Reporting requirement	Hour burden	Average No. of annual responses	Annual burden hours (rounded)
605; 613; 615(a), (e)(4); 616(d).	Request approval to begin subsea well-workover operations; submit Forms MMS-124 (include, if required, alternate procedures and equipment; stump test procedures plan) and MMS–125.	Burden covered under 1010–0141		0
612	Request establishment/amendment/cancellation of field well-workover rules.	5	2 requests	10
616(a)	Request exception to rated working pressure of the BOP equipment; request exception to annular-type BOP testing.	1.5	187 requests	281
600–618	General departure and alternative compliance requests not specifically covered elsewhere in Subpart F regulations.	2	200 requests	400
Subtotal			1,155 responses	1,457 hours
Posting				
614	Post number of stands of drill pipe or workover string and drill collars that may be pulled prior to filling the hole and equivalent well-control fluid volume.	0.25	844 postings	211
Subtotal			844 responses ..	211 hours
Submittals/Notifications				
602	Notify BOEMRE of any rig movement within Gulf of Mexico (Form MMS–144).	Burden covered under 1010–0150		0
617(b)	Submit results of pressure test, caliper, or otherwise evaluate tubing & wellhead equipment casing (every 30 days during prolonged operations).	4	88 reports	352
617(c)	Notify BOEMRE if sustained casing pressure is observed on a well.	1	57 notifications	57
Subtotal			145 responses ..	409 hours
Record/Document				
606	Instruct crew members in safety requirements of operations to be performed; document meetings.	1	868 workovers × 5 meetings = 4,340.	4,340
611	Document results of traveling-block safety device	1	868 workovers × 3 results = 2,604.	2,604
616(a), (f)	Record test pressures during BOP and coiled tubing tests for well-workovers on a pressure chart or with a digital recorder; certify the information is correct.	2	868 workovers × 3 recordings = 2,604.	5,208
616(a), (g)	Record time, date, and results of all pressure tests, actuations, inspections, and crew drills of the BOP system components and risers in the operations log during well-workovers; retain records for 2 years.	4	868 workovers × 3 recordings = 2,604.	10,416
616(b)(2)	Record reason for postponing BOP system tests	0.5	148 postponed tests.	74
Subtotal			12,300 responses.	22,642 hours
Total Burden			14,444 responses.	24,719 hours

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: We have identified no paperwork non-hour cost burdens associated with the collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, *you are not obligated to respond.*

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *" Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on March 22, 2010, we published a **Federal Register** notice (75 FR 13570) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, 250.199 provides the OMB control number for the information collection requirements imposed by the 30 CFR 250 regulations. The regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We have received no comments in response to these efforts.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by November 29, 2010.

Public Availability of Comments: Before including your address, phone number, e-mail 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.

BOEMRE Information Collection Clearance Officer: Arlene Bajusz (703) 787–1025.

Dated: September 1, 2010.

Doug Slitor,

Acting Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2010–27443 Filed 10–28–10; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2010–N199; 80230–1265–0000–S3]

Ruby Lake National Wildlife Refuge, Elko and White Pine Counties, NV; Comprehensive Conservation Plan and Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Intent; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), intend to prepare a Comprehensive Conservation Plan (CCP) and Environmental Assessment (EA) for the Ruby Lake National Wildlife Refuge, located in Elko and White Pine Counties of Nevada. We provide this notice in compliance with our CCP policy to advise other Federal and State agencies, Tribes, and the public of our intentions, and to obtain suggestions and information on the scope of issues to consider in the planning process.

DATES: To ensure consideration, we must receive your written comments by December 28, 2010.

ADDRESSES: Send your comments or requests for more information by any of the following methods.

- *E-mail: fw8plancomments@fws.gov*. Include "Ruby Lake CCP" in the subject line of the message.
- *Fax:* Attn: Mark Pelz, (916) 414–6497.
- *U.S. Mail:* Ruby Lake National Wildlife Refuge, HC 60, Box 860, Ruby Valley, Nevada 89833–9802.
- *In-Person Drop-off:* You may drop off comments during regular business hours; please call (775) 779–2237 for directions.

FOR FURTHER INFORMATION CONTACT: Mark Pelz, Chief, Refuge Planning, at (916) 414–6500, or Guy Wagner, Refuge Manager, at (775) 779–2237. Further information may also be found at *http://www.fws.gov/rubylake/.*

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we initiate our process for developing a CCP for Ruby Lake NWR in Elko and White Pine Counties, NV. This notice complies with our CCP policy to (1) Advise other Federal and State agencies, Tribes, and the public of our intention to conduct detailed planning on this refuge and (2) obtain suggestions and information on the scope of issues to consider in the environmental document and during development of the CCP.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Each unit of the National Wildlife Refuge System was established for specific purposes. We use these purposes as the foundation for developing and prioritizing the management goals and objectives for each refuge within the National Wildlife Refuge System mission, and to determine how the public can use each refuge. The planning process is a way for us and the public to evaluate management goals, objectives, and strategies that will ensure the best possible approach to wildlife, plant, and habitat conservation, while providing for wildlife-dependent recreation opportunities that are compatible with each refuge's establishing purposes and

the mission of the National Wildlife Refuge System.

Our CCP process provides opportunities for participation by Tribal, State, and local governments; agencies; organizations; and the public. We will be contacting identified stakeholders and individuals at this time for initial input. If you would like to meet with planning staff or would like to receive periodic updates, please contact us (*see* **ADDRESSES** section). At this time we encourage comments in the form of issues, concerns, ideas, and suggestions for the future management of Ruby Lake NWR.

We will conduct the environmental review of this project in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*); NEPA regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; and our policies and procedures for compliance with those laws and regulations.

Ruby Lake National Wildlife Refuge

Ruby Lake National Wildlife Refuge (NWR) was established in 1938 as a refuge and breeding ground for migratory birds and other wildlife (Executive Order 7923). Located along migration corridors serving both the Pacific and Central flyways, this refuge is a crossroads for birds migrating west along the Humboldt River to the Owens Valley, east to Utah's Great Salt Lake, northwest to the Klamath Basin, and south to the Colorado River Valley. Ruby Lake NWR supports the largest population of nesting canvasback ducks west of the Mississippi River outside Alaska, and is a vital waterfowl nesting area.

More than 200 springs emanating from the base of the Ruby Mountains provide life-sustaining water to the 39,926-acre refuge. The marsh is surrounded by 22,926 acres of meadows, grasslands, alkali playa, and shrub-steppe uplands. Water elevations in some marsh units are controlled to provide nesting and feeding areas for waterfowl and other marsh bird species. Vegetation in the meadows and grasslands is managed to provide nesting cover and feeding areas for wildlife. Existing public uses include wildlife observation, photography, interpretation, environmental education, waterfowl hunting, and recreational fishing.

Scoping: Preliminary Issues, Concerns, and Opportunities

We have identified preliminary issues, concerns, and opportunities that we may address in the CCP. These include wildlife management, habitat management, wildlife-dependent recreation, environmental education, and cultural resources. During public scoping, we may identify additional issues.

Public Meetings

We will give the public an opportunity to provide input at a public meeting (or meetings). You may obtain the schedule from the refuge planner or refuge manager (*see* **FOR FURTHER INFORMATION CONTACT**). You may also submit comments or request a meeting during the planning process by mail, e-mail, or fax (*see* **ADDRESSES**). There will be additional opportunities to provide public input once we have prepared a draft CCP.

Public Availability of Comments

Before including your address, phone number, e-mail 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: October 22, 2010.

Alexandra Pitts,

Acting Regional Director, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2010–27349 Filed 10–28–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Fish and Wildlife Service

Suisun Marsh Habitat Management, Preservation, and Restoration Plan, California

AGENCIES: Bureau of Reclamation and Fish and Wildlife, Interior.

ACTION: Notice of availability of draft environmental impact statement/environmental impact report (EIS/EIR) and notice of public meetings.

SUMMARY: The Bureau of Reclamation (Reclamation) and the Fish and Wildlife Service (Service), as the National Environmental Policy Act (NEPA) Federal joint lead agencies, and the State of California Department of Fish and Game (DFG), acting as the California Environmental Quality Act State lead agency, have made available for public review and comment the Suisun Marsh Habitat Management, Preservation, and Restoration Plan (SMP) Draft EIS/EIR. The SMP is a comprehensive 30-year plan designed to address various conflicts regarding use of resources within approximately 51,000 acres of the Suisun Marsh (Marsh), with the focus on achieving an acceptable multi-stakeholder approach to the restoration of tidal wetlands and the enhancement of managed wetlands and their functions.

DATES: Written comments on the Draft EIS/EIR must be received by 5 p.m. Pacific time on December 28, 2010.

Two public meetings have been scheduled to receive written comments regarding environmental effects:

- Thursday, November 18, 2010, 2 p.m. to 4 p.m., Suisun City, CA.
- Thursday, November 18, 2010, 6 p.m. to 8 p.m., Benicia, CA.

ADDRESSES: Send any written comments on the Draft EIS/EIR to Ms. Becky Victorine, Bureau of Reclamation, 2800 Cottage Way, Sacramento, CA 95825; or e-mail to *rvictorine@usbr.gov*.

The public meetings will be held at the following locations:

- Suisun City, CA at Rush Ranch, 3521 Grizzly Island Road, Suisun City, CA 94585.
- Benicia, CA at Benicia Public Library, 150 East L Street, Benicia, CA 94510.

The Draft EIS/EIR is accessible at the following Web site: *http://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?Project_ID=781.* Copies may also be requested from Ms. Becky Victorine, at the above addresses or at 916–978–5035.

FOR FURTHER INFORMATION CONTACT: Ms. Becky Victorine, Bureau of Reclamation, 916–978–5035, *rvictorine@usbr.gov,* or Ms. Cay Goude, U.S. Fish and Wildlife Service, 916–414–6600, *cay_goude@fws.gov.*

SUPPLEMENTARY INFORMATION: The Draft EIS/EIR documents the direct, indirect, and cumulative effects to the physical, biological, and socioeconomic environment that may result from implementing the SMP alternatives.

As the largest contiguous brackish water marsh remaining on the west coast of North America, the Marsh is a critical part of the San Francisco Bay/Sacramento-San Joaquin Delta (Bay-Delta) estuary ecosystem. The values of the Marsh have been recognized as important, and several agencies have been involved in the area's protection since the mid-1970s. In 2001, the principal Federal, State, and local agencies that have jurisdiction or interest in the Marsh directed the formation of a charter group to develop

a plan for Suisun Marsh that would balance the needs of the California Bay-Delta Program (CALFED), the Suisun Marsh Preservation Agreement, and other plans by protecting and enhancing existing land uses and existing waterfowl and wildlife values, including those associated with the Pacific Flyway, endangered species, and State and Federal water project supply quality. A subset of this charter group has collaboratively prepared the SMP Draft EIS/EIR. The principal agencies include the Service, Reclamation, National Marine Fisheries Service (NMFS), DFG, State of California Department of Water Resources, Suisun Resource Conservation District, and the California Bay-Delta Authority. When the EIS/EIR is finalized, each principal agency will use it to implement particular actions described and analyzed in the document that would contribute to the overall implementation of the SMP. NMFS and the U.S. Army Corps of Engineers are cooperating agencies in accordance with NEPA.

Background

The historical diking of tidal wetlands resulted in a loss of habitat for many species, including some listed as threatened or endangered. However, managed wetlands provide important habitats for numerous wetland species, migratory birds, and waterfowl; support existing wildlife populations; and are vital to the heritage of hunting in Suisun Marsh. Protecting the ecological values of both the historical tidal wetland habitat and the current managed wetland habitat is vital to ensure stability of the many species that depend on each of these wetland types. Managed wetlands, tidal wetlands, and uplands, whether publicly or privately owned, provide important wetlands for migratory waterfowl and other resident and migratory wetland-dependent species and opportunities for hunting, fishing, bird watching, and other recreational activities. There is a need to maintain these opportunities as well as improve public stewardship of the Marsh to ensure that the implementation of restoration and managed wetland activities is understood and valued for both public and private land uses. Current restrictions regarding levee maintenance activities in the Marsh have forced maintenance to be deferred on some exterior levees, increasing the risk of catastrophic flooding. Multiple factors contribute to the degradation of water quality in the Marsh, and improvement of water quality and water quality management practices is needed to benefit the ecological processes for all habitats, including managed and tidal wetlands. Given these needs, the SMP is a comprehensive plan designed to address the various conflicts regarding use of Marsh resources, with the focus on achieving an acceptable multi-stakeholder approach to the restoration of tidal wetlands and the enhancement of managed wetlands and their functions. The SMP is intended to guide near-term and future actions related to restoration of tidal wetlands and managed wetland activities in the Marsh.

Preferred Alternative

All action alternatives of the SMP include the same basic components, which provide a framework for how restoration and managed wetland activities would be implemented. The alternatives differ in the amount of acreage of restored tidal wetlands and remaining managed wetlands subject to managed wetland activities. Restoration of tidal wetlands would help to achieve the restoration goals established for the Marsh by the CALFED Ecosystem Restoration Program Plan, San Francisco Bay Area Wetlands Ecosystem Goals Project, and the Service's Draft Recovery Plan for Tidal Marsh Ecosystems of Northern and Central California. Restoration of tidal wetlands would be implemented over the 30-year SMP timeframe, and benefits from individual projects would change as elevations rise due to sediment accretion, vegetation becomes established, and vegetation communities shift over time from low marsh to high marsh condition.

Managed wetlands provide valuable habitat for a variety of non-waterfowl birds, mammals, reptiles, and amphibians. The intended outcomes of the managed wetlands activities described in the Draft EIS/EIR are to maintain and improve habitat conditions and minimize or avoid adverse effects of wetland operations. Most of these activities are already occurring in the Marsh; however, some of the current activities would be modified, and some new activities would be conducted, as described in detail in the Draft EIS/EIR.

The preferred alternative identified in the Draft EIS/EIR includes restoring 5,000 to 7,000 acres in the Marsh to fully functioning, self-sustaining tidal wetland and protecting and enhancing existing tidal wetland acreage; and improving the remaining 44,000 to 46,000 acres of managed wetlands, levee stability, and flood and drain capabilities, as previously identified in the 2007 CALFED Programmatic Record of Decision.

Special Assistance for Public Meetings

If special assistance is required to participate in the public meetings, please contact Becky Victorine at 916–978–5035, TDD 916–978–5608, or via e-mail at *rvictorine@usbr.gov*. Please notify Ms. Victorine as far in advance as possible to enable Reclamation to secure the needed services. If a request cannot be honored, the requestor will be notified. A telephone device for the hearing impaired (TDD) is available at 916–978–5608.

Public Disclosure

Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: May 4, 2010.

Pablo R. Arroyave,

Deputy Regional Director, Mid-Pacific Region, U.S. Bureau of Reclamation.

Dated: May 17, 2010.

Alexandra Pitts,

Assistant Regional Director of External Affairs, Pacific Southwest Region, U.S. Fish and Wildlife Service.

[FR Doc. 2010–27364 Filed 10–28–10; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2010–N186; 1112–0000–81420–F2]

Habitat Conservation Plan for Pacific Gas & Electric Company's Operation, Maintenance, and Minor New Construction Activities in the North Coast, Central Coast, Sacramento Valley, Sierra, and Mojave Regions, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Revised notice of intent to prepare an environmental impact statement and notice of public scoping meeting.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), intend to prepare an environmental impact statement (EIS) under the National Environmental Policy Act (NEPA) regarding an expected application from Pacific Gas & Electric Company (PG&E) for a permit authorizing incidental take

of Federally listed species under the Endangered Species Act of 1973, as amended (ESA).We are revising our previous notice of intent (NOI) of November 2008 in order to gather information necessary to prepare a joint EIS/environmental impact report (EIR) on the habitat conservation plan (HCP) for PG&E's operation, maintenance, and minor new construction activities in the North Coast, Central Coast, Sacramento Valley, and Sierra regions.

DATES: Please send written comments on or before November 29, 2010. A public meeting will be held on Wednesday, November 17, 2010, 1 p.m. to 3 p.m., Sacramento, CA.

ADDRESSES: The public meeting will be held at the South Notamas Community Center—Conference Room, 2921 Truxel Road, Sacramento, CA. Submit information, written comments, or questions related to the preparation of the EIS/EIR and NEPA process by U.S. mail to Mike Thomas, Branch Chief, Conservation Planning, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, CA 95825; or by facsimile to (916) 414–6713.

FOR FURTHER INFORMATION CONTACT: Mike Thomas, Branch Chief, Conservation Planning; or Eric Tattersall, Deputy Assistant Field Supervisor/Division Chief, Conservation Planning and Recovery, at the address above or at (916) 414–6600 (telephone).

SUPPLEMENTARY INFORMATION: We intend to prepare an EIS under NEPA regarding an expected application from PG&E for a permit authorizing incidental take of Federally listed species under the ESA. We are revising our previously published NOI (November 25, 2008; 73 FR 71668) to gather information necessary to prepare, in coordination with the California Department of Fish and Game (CDFG) and PG&E, a joint EIS/EIR on the HCP for PG&E's operation, maintenance, and minor new construction activities in the North Coast, Central Coast, Sacramento Valley, and Sierra regions. This revised notice describes the two main changes to the proposed action, which are the addition of the Mojave Region (Figure 1) to the study area and a change in proposed covered species list (Table 1).

We are providing this notice to: (1) Describe revisions to the proposed action; (2) update other Federal and State agencies, affected Tribes, and the public of the revised scope of the environmental review for this EIS/EIR; (3) announce the initiation of a new public scoping period; and (4) obtain suggestions and information on the scope of issues and alternatives to be included in the EIS/EIR.

The following table (Table 1) shows the changes by status and number of proposed covered species for which PG&E is anticipating requesting a permit:

TABLE 1—CHANGES IN PROPOSED COVERED SPECIES

Species category	Numbers of species	
	November 2008	Revised
Federally listed as threatened or endangered	75	85
Candidates	0	4
Unlisted species that may become listed during permit term	34	91
Total numbers of species	109	180

Background Information

The 2008 NOI specified that the plan area encompassed approximately 550,000 acres, including the right of way surrounding PG&E's gas and electric transmission and distribution facilities, lands owned by PG&E and/or subject to PG&E easements for these facilities, private access routes associated with PG&E's activities, future minor new construction areas, and mitigation areas for impacts resulting from PG&E's covered activities. The plan area included the network of PG&E facilities in 36 counties, including 18 counties within the Sacramento Valley Region, 20 counties within the Sierra Region (of which 12 overlap with the Sacramento Valley), 6 counties within the Central Coast Region, and 4 counties within the North Coast Region (of which 1 overlaps with the Sacramento Valley). PG&E originally intended to request a permit for 109 species under the HCP: 75 Federally listed and 34 unlisted species (covered species). We anticipated that PG&E would request a permit duration of 50 years. We held a public scoping meeting and Web conference in Sacramento, California, on December 4, 2008. We received public and agency comments through December 26, 2008.

Revisions to Project/Proposed Action

PG&E proposes to add approximately 23,000 acres to the plan area with the inclusion of the Mojave Region, which would increase the total plan area to approximately 573,000 acres in 36 counties. Within the 23,000 acres of the Mohave Region, PG&E proposes to implement operations and maintenance activities along an existing gas transmission line, which stretches from central Kern County to eastern San Bernardino County. A map of the new region to be added is attached (*see* Figure 1). Activities that may be covered under the HCP in the Mojave Region include a variety of tasks associated with the operation and maintenance of PG&E's gas transmission system, as mandated for public safety by the California Public Utilities Commission, the California Energy Commission, and the California Department of Transportation. More specifically, these activities would be restricted to: Gas pipeline protection, recoating, repair, and replacement, and vegetation management to maintain clearances around facilities. Preliminary analysis conducted by PG&E to date suggests that up to 5 acres of permanent impacts and 555 acres of temporary impacts are likely to occur as a result of proposed covered activities in the Mojave Region over a 50-year timeframe.

Because some species were inadvertently omitted from the original NOI and the present addition of the Mojave Region to the proposed action, PG&E added 71 species to the proposed covered species list since the 2008 NOI. The proposed covered species list has increased from a total of 109 species to 180 species. The 180 species PG&E currently proposes to address in the HCP include 57 animal species and 123 plant species (Table 2). Additional changes to the proposed covered species list may occur during the development of the HCP.

TABLE 2—REVISED PROPOSED COVERED SPECIES LIST

Scientific name	Common name	Federal Status
Invertebrates:		
Branchinectaconservatio	Conservancy fairy shrimp	E
Branchinectalongiantenna	Longhorn fairy shrimp	E
Branchinectalynchi	Vernal pool fairy shrimp	T

TABLE 2—REVISED PROPOSED COVERED SPECIES LIST—Continued

Scientific name	Common name	Federal Status
Branchinectamesovallensis	Midvalley fairy shrimp	—
Desmoceruscalifornicusdimorphus	Valley elderberry longhorn beetle	T
Euphilotesenoptessmithi	Smith's blue butterfly	E
Euproserpinuseuterpe	Kern primrose sphinx moth	T
Helminthoglyptawalkeriana	Morro shoulderband	E
Lepiduruspackardi	Vernal pool tadpole shrimp	E
Lycaeidesargyrognomonlotis	Lotis blue butterfly	E
Pacifastacusfortis	Shasta crayfish	E
Polyphyllabarbata	Mount Hermon (=barbate) june beetle	E
Speyeriazerenebehrensii	Behren's silverspot butterfly	E
Trimerotropisinfantilis	Zayante band-winged grasshopper	E
Amphibians:		
Ambystomacaliforniense	California tiger salamander—Central Distinct Population Segment	T
Ambystomacaliforniense	California tiger salamander—Santa Barbara County Distinct Population Segment.	E
Ambystomamacrodactylumcroceum	Santa Cruz long-toed salamander	E
Anaxyruscalifornicus	Arroyo toad	E
Batrachosepsstebbinsi	Tehachapi slender salamander	—
Bufocanorus	Yosemite toad	C
Hydromantesshastae	Shasta salamander	—
Ranaboylii	Foothill yellow-legged frog	—
Ranadraytonii	California red-legged frog	T
Ranamuscosa	Southern mountain (=Sierra Madre) yellow-legged frog	E
Ranasierrae	Sierra Nevada yellow-legged frog	C
Rhyacotritonvariegatus	Southern torrent salamander	—
Scaphiopushammondi	Western spadefoot toad	—
Reptiles:		
Emys(=Clemmys)marmorata	Western pond turtle	—
Gambeliasila	Blunt-nosed leopard lizard	E
Gopherusagassizii	Desert tortoise	T
Thamnophisgigas	Giant garter snake	T
Thamnophissirtalistetrataenia	San Francisco garter snake	E
Birds:		
Agelaius tricolor	Tricolored blackbird	—
Aquila chrysaetos	Golden eagle	—
Athenecunicularia	Western burrowing owl	—
Brachyramphusmarmoratus	Marbled murrelet	T
Buteoswainsoni	Swainson's hawk	—
Coccyzusamericanusoccidentalis	Western yellow-billed cuckoo	C
Empidonaxtraillii	Willow flycatcher	—
Empidonaxtraillliextimus	Southwestern willow flycatcher (CA)	E
Falco peregrinusanatum	American peregrine falcon	—
Gruscanadensistabida	Greater sandhill crane	—
Haliaeetusleucocephalus	Bald eagle	—
Laterallusjamaicensiscoturniculus	Black rail (CA)	—
Prognesubis	Purple martin	—
Strixnebulosa	Great gray owl	—
Strixoccidentaliscaurina	Northern spotted owl	T
Vireo belliipusillus	Least Bell's vireo	E
Mammals:		
Ammospermophilus nelson	Nelson's antelope squirrel	—
Aplodontiarufaniger	Point Arena mountain beaver	E
Dipodomysingens	Giant kangaroo rat	E
Dipodomysnitratoidesnitratoides	Tipton kangaroo rat	E
Martesamericanahumboldtensis	Humboldt marten	—
Martespennanti	Fisher—west coast Distinct Population Segment	C
Vulpesmacrotismutica	San Joaquin kit fox	E
Vulpesvulpesnecator	Sierra Nevada red fox	—
Xerospermophilusmohavensis	Mohave ground squirrel	—
Plants:		
Abroniaumbellata ssp. *breviflora*	Pink sand-verbena	—
Ancistrocarphuskeilii	Santa Ynezgroundstar	—
Arabisconstancei	Constance's rock cress	—
Arctostaphyloshookeri ssp. *hearstiorum*	Hearst's manzanita	—
Arctostaphylosmorroensis	Morro manzanita	T
Arctostaphylosmyrtifolia	Ione manzanita	T
Arctostaphylospajaroensis	Pajaromanzanita	—
Arctostaphylospurissima	La Purisimamanzanita	—
Arctostaphylosstanfordiana ssp. *raichei*	Raiche's manzanita	—
Arctostaphylostomentosa ssp. *daciticola*	Dacitemanzanita	—
Arctostaphyloswellsii	Wells' manzanita	—

TABLE 2—REVISED PROPOSED COVERED SPECIES LIST—Continued

Scientific name	Common name	Federal Status
Astragalusagnicidus	Humboldt milk-vetch	—
Astragalusalbens	Cushenbury milk-vetch	E
Astragalustener var. *ferrisiae*	Ferris' milk-vetch	—
Atriplexparishii	Parish's brittlescale	—
Bensoniellaoregona	Bensoniella	—
California macrophylla	Round-leaved filaree	—
Calycadeniavillosa	Dwarf calycadenia	—
Calystegiastebbinsii	Stebbins' morning-glory	E
Camissoniabenitensis	San Benito evening-primrose	T
Carpenteriacalifornica	Tree-anemone	—
Caulanthuscalifornicus	California jewel-flower	E
Ceanothusconfusus	Rincon Ridge ceanothus	—
Ceanothusmaritimus	Maritime ceanothus	—
Ceanothusroderickii	Pine Hill ceanothus	E
Chamaesycehooveri	Hoover's spurge	T
Chlorogalumpurpureum var. *purpureum*	Purple amole	T
Chorizanthehowellii	Howell's spineflower	E
Chorizanthepungens var. *hartwegiana*	Ben Lomond spineflower	E
Chorizanthepungens var. *pungens*	Monterey spineflower	T
Chorizantherobusta var. *robusta*	Robust spineflower	E
Cirsiumfontinale var.*obispoense*	San Luis Obispo fountain thistle	E
Cirsiumrhothophilum	Surf thistle	—
Clarkia amoena ssp. *whitneyi*	Whitney's farewell-to-spring	—
Clarkia borealis ssp. *arida*	Shasta clarkia	—
Clarkia mosquinii	Mosquin's clarkia	—
Clarkia speciosa ssp. *immaculata*	Pismo clarkia	E
Cordylanthusmollis ssp. *hispidus*	Hispid bird's-beak	—
Cordylanthuspalmatus	Palmate-bracted bird's-beak	E
Cordylanthusrigidus ssp. *littoralis*	Seaside bird's-beak	—
Cryptanthaclevelandii var. *dissita*	Serpentine cryptantha	—
Cupressusabramsiana	Santa Cruz cypress	E
Cupressusgoveniana ssp. *goveniana*	Gowen cypress	T
Deinandrahalliana	Hall's tarplant	—
Dithyreamaritima	Beach spectaclepod	—
Dudleyablochmaniae ssp. *blochmaniae*	Blochman's dudleya	—
Eriastrumtracyi	Tracy's eriastrum	—
Ericameriafasciculata	Eastwood's goldenbush	—
Erigeron parishii	Parish's daisy	T
Eriodictyoncapitatum	Lompoc yerba santa	E
Eriogonumapricum var. *apricum*	Ione buckwheat	E
Eriogonumnudum var. *decurrens*	Ben Lomond buckwheat	—
Eryngiumaristulatum var. *hooveri*	Hoover's button-celery	—
Eryngiumconstancei	Loch Lomond button-celery	E
Eryngiumracemosum	Delta button-celery	—
Erysimummenziesii ssp. *eurekense*	Humboldt Bay wallflower	E
Erysimummenziesii ssp. *menziesii*	Menzies' wallflower	E
Erysimumteretifolium	Santa Cruz wallflower	E
Eschscholziarhombipetala	Diamond-petaled California poppy	—
Fremontodendrondecumbens	Pine Hill flannelbush	E
Fritillariaroderickii	Roderick's fritillary	—
Galiumcalifornicum ssp. *sierrae*	El Dorado bedstraw	E
Giliatenuiflora ssp. *arenaria*	Sand gilia	E
Gratiolaheterosepala	Boggs Lake hedge-hyssop	—
Guggolz' harmonia	Harmoniaguggolziorum	—
Holocarphamacradenia	Santa Cruz tarplant	T
Horkeliacuneata ssp. *puberula*	Mesa horkelia	—
Horkeliacuneata ssp. *sericea*	Kellogg's horkelia	—
Juncusleiospermus var. *leiospermus*	Red Bluff dwarf rush	—
Lastheniaburkei	Burke's goldfields	E
Lastheniaconjugens	Contra Costa goldfields	E
Lastheniaglabrata ssp. *coulteri*	Coulter's goldfields	—
Layiacarnosa	Beach layia	E
Layiadiscoidea	Rayless layia	—
Layiaheterotricha	Pale-yellow layia	—
Legenerelimosa	Legenere	—
Lilaeopsismasonii	Mason's lilaeopsis	—
Liliummaritimum	Coast lily	—
Liliumoccidentale	Western lily	E
Limnanthesbakeri	Baker's meadowfoam	—
Limnanthesfloccosa ssp. *californica*	Butte County meadowfoam	E
Lomatiumstebbinsii	Stebbins' lomatium	—

TABLE 2—REVISED PROPOSED COVERED SPECIES LIST—Continued

Scientific name	Common name	Federal Status
Lotus rubriflorus	Red-flowered lotus	—
Lupinus milo-bakeri	Milo Baker's lupine	—
Lupinusnipomensis	Nipomo Mesa lupine	E
Lupinustidestromii	Tidestrom's lupine	E
Madiaradiata	Showy madia	—
Malacothamnusabbottii	Abbott's bush mallow	—
Monardelladouglasii ssp. *venosa*	Veiny monardella	—
Monolopiacongdonii	San Joaquin woollythreads	E
Navarretialeucocephala ssp. *bakeri*	Baker's navarretia	—
Navarretialeucocephala ssp. *pauciflora*	Few-flowered navarretia	E
Navarretialeucocephala ssp. *plieantha*	Many-flowered navarretia	E
Navarretiamyersii ssp. *deminuta*	Small pincushion navarretia	—
Navarretiamyersii ssp. *myersii*	Pincushion navarretia	—
Navarretiaprostrata	Prostrate navarretia	—
Oenotheradeltoidesssp. howellii	Antioch Dunes evening-primrose	E
Oenotherawolfii	Wolf's evening-primrose	—
Orcuttiapilosa	Hairy orcutt grass	E
Orcuttiatenuis	Slender orcutt grass	T
Orcuttiaviscida	Sacramento orcutt grass	E
Packeralayneae	Layne's ragwort	T
Paronychia ahartii	Ahart's paronychia	—
Pentachaetabellidiflora	White-rayed pentachaeta	E
Pinusradiata	Monterey pine	—
Piperiayadonii	Yadon's rein orchid	E
Pleuropogonhooverianus	North Coast semaphore grass	—
Polygonumhickmanii	Scotts Valley polygonum	E
Pseudobahiabahiifolia	Hartweg's golden sunburst	E
Puccinelliahowellii	Howell's alkali grass	—
Rhynchosporacalifornica	California beaked-rush	—
Saniculamaritima	Adobe sanicle	—
Sedellaleiocarpa	Lake County stonecrop	E
Sidalceahickmanii ssp. *anomala*	Cuesta Pass checkerbloom	—
Styloclinemasonii	Mason's neststraw	—
Suaedacalifornica	California seablite	E
Thlaspicalifornicum (=Noccaeafendleri ssp. *californicum)*	Kneeland Prairie pennycress	E
Trifoliumbuckwestiorum	Santa Cruz clover	—
Trifoliumpolyodon	Pacific Grove clover	—
Trifoliumtrichocalyx	Monterey clover	E
Tropidocarpumcapparideum	Caper-fruited tropidocarpum	—
Tuctoriagreenei	Greene's tuctoria	E
Verbena californica	California vervain	T

E = Federally listed as Endangered.
T = Federally listed as Threatened.
C = Federal candidate species.
— = no Federal listing status.

Comments

Please direct any comments to the Service contact listed in the **ADDRESSES** section, and any questions to the Service contacts listed in the **FOR FURTHER INFORMATION CONTACT** section. All comments and materials we receive, including names and addresses, will become part of the administrative record and may be released to the public. Before including your address, phone number, e-mail 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.

Reasonable Accommodation

Persons needing reasonable accommodations in order to attend and participate in the public meeting should contact Mike Thomas at 916–414–6600 as soon as possible. In order to allow sufficient time to process requests, please call no later than 1 week before the public meeting. Information regarding this proposed action is available in alternative formats upon request. Persons needing reasonable accommodations in order to view the proposed action should contact Mike Thomas at (916) 414–6600 as soon as possible.

Authority: This notice is provided under Section 10(a) of the Act and Service regulations for implementing NEPA (40 CFR 1506.6).

Dated: October 22, 2010.

Alexander Pitts,

Deputy Regional Director, Pacific Southwest Region, Sacramento, California.

BILLING CODE 4310–55–P

Figure 1. Mojave Region added since the November 25, 2008 NOI

[FR Doc. 2010–27338 Filed 10–28–10; 8:45 am]
BILLING CODE 4310–55–C

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO921000–L13200000–EL0000, COC–74447]

Notice of Invitation To Participate; Exploration for Coal in Colorado License Application COC–74447

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: All interested parties are hereby invited to participate with Williams Fork Land Company on a pro rata cost-sharing basis, in a program for the exploration of coal deposits owned by the United States of America in lands located in Moffat and Routt Counties, Colorado.

DATES: Any party electing to participate in this exploration program must send written notice to the Williams Fork Land Company and the Bureau of Land Management (BLM) as provided in the **ADDRESSES** section below by November 29, 2010 or 10 calendar days after the last publication of this notice in the *Craig Daily Press* and the *Steamboat Pilot* newspapers, whichever is later. This notice will be published once a week for 2 consecutive weeks in the *Craig Daily Press,* Craig, Colorado, and the *Steamboat Pilot,* Steamboat Springs, Colorado.

ADDRESSES: The exploration plan, as submitted by the Williams Fork Land Company, is available for review in the BLM, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, and the BLM, Little Snake Field Office, 455 Emerson Street, Craig, Colorado 81625, during normal business hours (9 a.m. to 4 p.m.), Monday through Friday. Any party electing to participate in this exploration program shall notify the BLM State Director, in writing, at the BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215 and the Williams Fork Land Company, Attn: James M. Mattern, P.O. Box 187, Craig, Colorado 81626. The written notice must include a justification for participation and any recommended changes in the exploration plan with specific reasons for such changes.

FOR FURTHER INFORMATION CONTACT: Kurt M. Barton at (303) 239–3714, *Kurt_Barton@blm.gov.* or Jennifer Maiolo at (970) 826–5077, *Jennifer_Maiolo @blm.gov.*

SUPPLEMENTARY INFORMATION: The authority for the notice is Section 2(b) of the Mineral Leasing Act of 1920, as amended by Section 4 of the Federal Coal Leasing Amendments Act of 1976 and the regulations adopted as 43 CFR part 3410. The purpose of the exploration program is to gain additional geologic knowledge of the coal underlying the exploration area for the purpose of assessing the reserves contained in a potential lease. The Federal coal resources are located in Moffat and Routt County, Colorado.

Sixth Principal Meridian

T. 6 N., R. 89 W.,
  Sec. 31, lots 5, 6, and 11;
  Sec. 32, lot 4.
T. 6 N., R. 90 W.,
  Sec. 26, lots 4, 5, and 6, and lots 11 to 14, inclusive;
  Sec. 27, lots 1 and 2, and lots 5 to 16, inclusive;
  Sec. 28, lot 2, lots 7 to 11, inclusive, and lots 14, 15, and 16;
  Sec. 33, lots 1 to 8, inclusive;
  Sec. 34, lots 1 to 16, inclusive;
  Sec. 35, lots 1 to 16, inclusive.
T. 5 N, R. 89 W.,
  Sec. 5, lots 5 to 19, inclusive, and Tr 43;
  Sec. 6, lots 1, 2, 4, 6, and 7, S½NE¼, SE¼, and E½SW¼;
  Sec. 7, lots 1, 2, and 3, E½NW¼, NE¼, N½SE¼, and NE¼SW¼;
  Sec. 8, lots 1 to 7, inclusive, lots 10 to 13, inclusive, and E½NE¼.
T. 5 N., R. 90 W.,
  Sec. 1, lots 5 to 20, inclusive;
  Sec. 2, lots 5 to 20, inclusive;
  Sec. 3, lots 5 to 18, inclusive;
  Sec. 4, lots 5 to 16, inclusive, and lots 18, 19, and 20;
  Sec. 10, lot 4;
  Sec. 11, lots 1 to 8, inclusive;
  Sec. 12, lots 1 to 12, inclusive.

These lands contain 8,690 acres, more or less.

The proposed exploration program will be conducted pursuant to an exploration plan to be approved by the BLM. The plan may be modified to accommodate the legitimate exploration needs of persons seeking to participate.

The foregoing is published in the **Federal Register** pursuant to 43 CFR 3410.2–1(c)(1).

Helen M. Hankins,

State Director.

[FR Doc. 2010–27393 Filed 10–28–10; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY–957400–11–L14200000–BJ0000]

Notice of Filing of Plats of Survey, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey, Wyoming.

SUMMARY: The Bureau of Land Management (BLM) has filed the plats of survey of the lands described below in the BLM Wyoming State Office, Cheyenne, Wyoming, on the dates indicated.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003.

SUPPLEMENTARY INFORMATION: These surveys were executed at the request of the Bureau of Land Management, and are necessary for the management of resources. The lands surveyed are:

The plat and field notes representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of section 10, Township 13 North, Range 77 West, Sixth Principal Meridian, Wyoming, Group No. 801, was accepted September 29, 2010.

The plat and field notes representing the dependent resurvey of a portion of the Twelfth Auxiliary Meridian West, through Township 52 North, between Ranges 100 and 101 West, a portion of Lot No. 43 and the metes and bounds survey of Lot 43–C, Township 52 North, Range 100 West, Sixth Principal Meridian, Wyoming, Group No. 802, was accepted September 29, 2010.

The plat and field notes representing the dependent resurvey of a portion of the Thirteenth Standard Parallel North, through Range 100 West, Lot No. 41 and the subdivision of Lot No. 41, Township 53 North, Range 100 West, Sixth Principal Meridian, Wyoming, Group No. 802, was accepted September 29, 2010.

The plat and field notes representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of sections 9 and 10, Township 47 North, Range 60 West, Sixth Principal Meridian, Wyoming, Group No. 803, was accepted September 29, 2010.

The plat and field notes representing the dependent resurvey of the subdivisional lines, Township 22 North, Range 93 West, Sixth Principal Meridian, Wyoming, Group No. 807, was accepted September 29, 2010.

The plat and field notes representing the dependent resurvey of the south boundary, west boundary and the subdivisional lines, Township 28 North, Range 109 West, Sixth Principal Meridian, Wyoming, Group No. 808, was accepted September 29, 2010.

Copies of the preceding described plats and field notes are available to the public at a cost of $1.10 per page.

Dated: October 21, 2010.

John P. Lee,

Chief Cadastral Surveyor, Division of Support Services.

[FR Doc. 2010–27342 Filed 10–28–10; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY–957400–11–L14200000–BJ0000–TRST]

Notice of Filing of Plats of Survey, Nebraska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plats of Survey, Nebraska.

SUMMARY: The Bureau of Land Management (BLM) is scheduled to file the plats of survey of the lands described below thirty (30) calendar days from the date of this publication in the BLM Wyoming State Office, Cheyenne, Wyoming.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the Bureau of Indian Affairs and is necessary for the management of these lands. The lands surveyed are:

The plats and field notes representing the dependent resurvey of the Treaty Boundary of March 8, 1865, through Range 7 East, portions of the exterior boundaries, the subdivisional lines and the subdivision of certain sections, and the survey of the subdivision of certain sections, Township 26 North, Range 7 East, Sixth Principal Meridian, Nebraska, Group No. 166, was accepted September 29, 2010.

Copies of the preceding described plats and field notes are available to the public at a cost of $1.10 per page.

Dated: October 21, 2010.

John P. Lee,

Chief Cadastral Surveyor, Division of Support Services.

[FR Doc. 2010–27341 Filed 10–28–10; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK920000–L14200000–BK0000]

Notice of Filing of Plats of Survey, Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice of Filing of Plats of Survey, Alaska.

DATES: The Alaska State Office, Bureau of Land Management, Anchorage, Alaska, must receive comments on or before November 29, 2010. Protests of the survey must be filed before November 29, 2010 to be considered.

ADDRESSES: Bureau of Land Management, Alaska State Office, 222 W. 7th Ave., Anchorage, AK 99513–7599.

FOR FURTHER INFORMATION CONTACT: Frank A. Hardt, 907–271–3182, fax 907–271–4549, e-mail *frank_hardt@blm.gov.*

SUPPLEMENTARY INFORMATION: The plat and field notes, representing the dependent resurvey and subdivision of a portion of U.S. Survey No. 1170, Alaska Railroad Terminal Reserve, and the dependent resurvey of Tract A, U.S. Survey No. 3458, the dependent resurvey of portions of numerous U.S. Surveys lying within or adjacent to U.S. Survey No. 1170, the survey of portions of three quit claim deeds, the survey of the Alaska Railroad Tidelands identified in the Agreement of the Parties in *United States* v. *City of Anchorage, et al.,* Civil No. A–47–65, situated in the Municipality of Anchorage within T. 13 N., Rs. 3 and 4 W., Seward Meridian, Alaska, was accepted October 15, 2010.

The plat, in 4 sheets, representing the dependent resurvey and subdivision of certain lots within U.S. Surveys No. 1991 and 1992, the Exterior Boundaries

and Subdivision, respectively, of the Unalaska Townsite, situated along Iliuliuk Bay in the City of Unalaska, Seward Meridian, Alaska, was accepted October 15, 2010.

The plat will not be officially filed until the day after BLM has accepted or dismissed all protests and they have become final, including decisions on appeals.

Before including your address, phone number, e-mail 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.

Authority: Title VI of Pub. L. 97–468 (96 Stat. 2556; 25 U.S.C. 176).

Dated: October 22, 2010.

Frank A. Hardt,

Cadastral Land Surveyor.

[FR Doc. 2010–27335 Filed 10–28–10; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLID9570000.LL14200000.BJ0000]

Idaho: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plats of Surveys.

SUMMARY: The Bureau of Land Management (BLM) has officially filed the plat of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, effective 9:00 a.m., on the date specified.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho 83709–1657.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the U.S. Fish and Wildlife Service to meet their administrative needs. The lands surveyed are: The plat constituting the entire survey record of the survey of certain islands in the Snake River, T. 1 S., R. 2 W. and T. 1 S., R. 3 W., Boise Meridian, Idaho, was accepted October 13, 2010.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, 30 days from the date of publication in the **Federal Register**. This survey was executed at the request of the U.S. Fish and Wildlife Service to meet certain administrative and management purposes.

Dated: October 20, 2010.

Jeff A. Lee,

Acting Chief Cadastral Surveyor for Idaho.

[FR Doc. 2010–27348 Filed 10–28–10; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV912000.L16400000.PH0000.006F 241A; 11–08807; TAS: 14X1109]

Notice of Cancellation of Public Meeting: Resource Advisory Councils, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Cancellation of Public Meeting.

SUMMARY: The Department of the Interior, Bureau of Land Management (BLM) Nevada has cancelled a joint meeting of its three Resource Advisory Councils (RACs) previously scheduled to be held on November 4 and 5, 2010 in Sparks, Nevada. The meeting will be rescheduled in early 2011.

FOR FURTHER INFORMATION CONTACT: Rochelle Francisco, *telephone:* (775) 861–6588, *e-mail: rochelle_francisco@blm.gov.*

SUPPLEMENTARY INFORMATION: The Nevada RACs advise the Secretary of the Interior, through the BLM Nevada State Director, on a variety of planning and management issues associated with public land management in Nevada.

Dated: October 21, 2010.

Doran Sanchez,

Chief, Office of Communications, BLM Nevada.

[FR Doc. 2010–27355 Filed 10–28–10; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Removal of Listed Property

Pursuant to section 60.15 of 36 CFR part 60, comments are being accepted on the following properties being considered for removal from the National Register of Historic Places. 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 November 15, 2010.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

Request for REMOVAL has been made for the following resources:

INDIANA

Allen County

Haynes, John and Dorothy, House Address Restricted, Ft. Wayne, 04000635

TEXAS

Orange County

Woodmen of the World Lodge—Phoenix Camp No. 32, 110 Border St., Orange, 95001551

[FR Doc. 2010–27323 Filed 10–28–10; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Proposed Move of Listed Property

Pursuant to section 60.14 of 36 CFR part 60, comments are being accepted on the following properties listed on the National Register of Historic Places that are being considered for relocation. 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 November 15, 2010.

Before including your address, phone number, e-mail address, or other personal identifying information in your

comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

Request to MOVE has been made for the following resource:

FLORIDA

Orange County

Apopka Seaboard Air Line Railway Depot, 36 E Station St., Apopka, 93000134.

[FR Doc. 2010–27321 Filed 10–28–10; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

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 October 9, 2010. 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 November 15, 2010.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

J. Paul Loether,

National Register of Historic Places/National Historic Landmarks Program.

CALIFORNIA

San Bernardino County

Maloof, Sam and Alfreda, Compound, 5131 Carnelian St, Rancho Cucamonga, 10000932

CONNECTICUT

Fairfield County

Oysterman's Row, Roughly bounded by Pond St, Rowayton Ave, Cook St, and Roton Ave, Norwalk, 10000927

GEORGIA

Grady County

Ochlocknee Missionary Baptist Church and Cemetery, 521 US HWY 319 S, Beachton, 10000924

MASSACHUSETTS

Worcester County

Black Tavern Boundary Increase, 140, 142 Center Road, Dudley, 10000928

MISSISSIPPI

Rankin County

Brandon Cemetery, Corner of Old Depot Rd and Miss. State HWY 471 Ext., Brandon, 10000925

Downtown Brandon Historic District, E and W Government Sts from Timber St to College St, 100 blocks of N College St and Black St, Brandon, 10000926

SOUTH CAROLINA

Beaufort County

Union Church of Port Royal, 1004 11th St, Port Royal, 10000931

Greenville County

McDowell House, 500 N Main St, Fountain Inn, 10000921

Welborn, F.W., House, 405 N Weston St, Fountain Inn, 10000920

Lexington County

Cedar Grove Lutheran Church, 1220 Cedar Grove Rd, Leesville, 10000922

TENNESSEE

Davidson County

Stone Hall, 1014 Stones River Rd, Nashville, 10000923

WYOMING

Carbon County

JO Ranch Rural Historic Landscape, 24 mi NE of Baggs, Baggs, 10000930

Sweetwater County

Finley Site, The, 4 mi SE of Eden, Eden, 10000929

[FR Doc. 2010–27320 Filed 10–28–10; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWYD01000 L10400000 XI0000 LXSS016K0000]

Notice of Intent To Solicit Nominations: Pinedale Anticline Working Group, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of call for nominations.

SUMMARY: Nominations are being solicited for nine positions on the Pinedale Anticline Working Group (PAWG).

DATES: Individuals or groups wishing to submit a nomination must send the required information postmarked within 30 days from the date of publication of this notice in the **Federal Register**.

ADDRESSES: Nominations should be sent to Shelley Gregory, Bureau of Land Management, Pinedale Field Office, 1625 West Pine Street, P.O. Box 768, Pinedale, Wyoming 82941, or e-mailed to *shelley_gregory@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Shelley Gregory, Bureau of Land Management, Pinedale Field Office, 1625 West Pine Street, P.O. Box 768, Pinedale, Wyoming 82941; 307–367–5328, *shelley_gregory@blm.gov.*

SUPPLEMENTARY INFORMATION: The PAWG was established by the Environmental Impact Statement (EIS) Record of Decision (ROD) for the Pinedale Anticline Project Area (PAPA) on July 27, 2000, and carried forward with the release of the ROD for the PAPA Supplemental EIS on September 12, 2008. The Secretary of the Interior renewed the PAWG charter on August 3, 2010.

The PAWG is a Federal Advisory Committee Act group which develops recommendations and provides advice to the BLM on mitigation, monitoring, and adaptive management in the PAPA.

Additional information about the PAWG, its membership and activities, and the nomination process can be found at: *http://www.blm.gov/wy/st/en/field_offices/pinedale/pawg.html.*

Nominations for the PAWG seats are being solicited from within the following categories:

Persons who:

1. Hold Federal grazing permits or leases within the area for which the PAWG is organized;

2. Represent interests associated with transportation or rights-of-way;

3. Represent energy and mineral development interests; or

4. Own adjacent land to the area for which the PAWG is organized.

Persons representing:

1. Nationally or regionally recognized environmental organizations;

2. Dispersed recreation interests (*i.e.,* hunter, angler, outdoor recreation, off-highway vehicle users, or commercial recreation activities);

3. Archaeological and historical organizations or expertise; or

4. The affected public-at-large.

Persons who:

1. Hold State, county, or local elected office;

2. Are employed by a State Agency responsible for the management of natural resources, land, or water;

3. Are employed as academicians by a natural resource management or natural sciences organization (*i.e.,* museum, university); or

4. Are employed by the local government.

PAWG duties and responsibilities are as follows:

1. Develop recommendations for the BLM regarding matters relating to monitoring and mitigation of oil and gas development and on adaptive management as described in the Supplemental EIS ROD for the Pinedale Anticline Project Area. At the direction of the Designated Federal Officer (DFO), the PAWG may review and analyze information, recommend issues for evaluation, and provide advice on the issues presented;

2. Review the implementation of construction and rehabilitation operations through an annual field inspection to provide advice to ensure that the mitigation measures are reasonable and effective;

3. Advise the BLM on working with stakeholders to develop or enhance resource management programs and objectives; and

4. Make recommendations on future PAWG resource management priorities.

Members are expected to attend all scheduled PAWG meetings. Members are appointed for 2-year terms and may be reappointed to additional terms at the discretion of the Secretary of the Interior.

Nomination packages should contain the following information:

1. Representative category;

2. Full name;

3. Business address and phone number;

4. Home address and phone number;

5. E-mail address;

6. Occupation title;

7. Qualifications (education, including colleges, degrees, major fields of study and/or training);

8. Complete work history with dates of employment;

9. Career highlights (significant related experience, civic and professional activities, elected offices, prior advisory committee experience, or career achievements related to the interest to be represented);

10. Experience in collaborative management techniques, such as long-term planning, management across jurisdictional boundaries, data sharing, information exchange, and partnerships;

11. Experience in data analysis and interpretation, problem identification, and evaluation of proposals;

12. Knowledge of issues involving oil and gas development;

13. List any leases, licenses, permits, contracts, or claims held by the nominee that involve lands or resources administered by the BLM;

14. A minimum of two letters of reference from group or organization to be represented;

15. Nominator's name, address, and telephone numbers (if not self-nominated); and

16. Date of nomination.

A group nominating more than one person should indicate its preferred order of appointment selection. Nominations received during the earlier Call for Nominations period will be considered after this closing date, so prior applicants do not need to submit a new form.

Note: The Obama Administration prohibits individuals who are currently Federally registered lobbyists to serve on all FACA and non-FACA boards, committees or councils.

Ruth Welch,

Associate State Director.

[FR Doc. 2010–27391 Filed 10–28–10; 8:45 am]

BILLING CODE 4310–22–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *In Re Certain Liquid Crystal Display Devices, Including Monitors, Televisions, and Modules and Components Thereof,* DN 2766; the Commission is soliciting comments on any public interest issues raised by the complaint.

FOR FURTHER INFORMATION CONTACT: Marilyn R. Abbott, Secretary to the Commission, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint filed on behalf of Thomson Licensing SAS and Thomson Licensing LLC on October 25, 2010. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain liquid crystal display devices, including monitors, televisions, and modules, and components thereof. The complaint names as respondents Qisda Corporation, Taiwan, R.O.C., Qisda America Corporation, Irvine, CA, BenQ Corporation, Taiwan, R.O.C., BenQ America Corporation, Irvine, CA, BenQ Latin America Corporation, Miami, Fl, AU Optronics Corporation, Taiwan, R.O.C., and AU Optronics Corporation America, Houston, TX.

The complainant, proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five pages in length, on any public interest issues raised by the complaint. Comments should address whether issuance of an exclusion order and/or a cease and desist order in this investigation would negatively affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the potential orders;

(iii) Indicate the extent to which like or directly competitive articles are produced in the United States or are otherwise available in the United States, with respect to the articles potentially subject to the orders; and

(iv) Indicate whether Complainant, Complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to an exclusion order and a cease and desist order within a commercially reasonable time.

Written submissions must be filed no later than by close of business, five business days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Submissions should refer to the docket number ("Docket No. 2766") in a prominent place on the cover page and/or the first page. The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (*see* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.50(a)(4) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50(a)(4)).

By order of the Commission.

Issued: October 25, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–27373 Filed 10–28–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of First Amendment to Consent Decree Under the Clean Water Act

Notice is hereby given that on October 21, 2010, a proposed First Amendment to Consent Decree ("First Amendment") in *United States and State of Ohio* v. *City of Toledo, Ohio,* Civil Action No. 3:91:CV7646, was lodged with the United States District Court for the Northern District of Ohio.

In this action, on December 17, 2002, the Court approved and entered a Consent Decree between the United States and State of Ohio as plaintiffs and the City of Toledo ("Toledo") as defendant, which required Toledo, among other matters, to develop and obtain approval from the United States and Ohio Environmental Protection Agencies ("EPA" and "Ohio EPA"), and, once approved, implement a long term control plan to reduce its discharges of combined sanitary sewage and stormwater into the Maumee and Ottawa Rivers and Swan Creek. The Consent Decree also required Toledo to make major improvements to and increase the capacity of its wastewater treatment plant. The First Amendment recognizes EPA and Ohio EPA's approval of Toledo's long term control plan and makes certain changes to Toledo's requirements to construct improvements at its wastewater treatment plant. In addition, the First Amendment requires Toledo to perform a study that evaluates how effectively Toledo's wet weather treatment facility, built pursuant to the Consent Decree, eliminates pathogens from the wastewater being treated.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the First Amendment. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States and State of Ohio* v. *City of Toledo, Ohio,* D.J. Ref. 90–5–1–1–3554.

The First Amendment may be examined at the Office of the United States Attorney, Four Seagate, Suite 308, Toledo, OH 43604, and at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604. During the public comment period, the First Amendment may also be examined on the following Department of Justice Web site, to *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the First Amendment may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $ 4.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen M. Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–27407 Filed 10–28–10; 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—IMS Global Learning Consortium, Inc.

Notice is hereby given that, on September 30, 2010, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), IMS Global Learning Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 4C Soft, Inc., Seoul, REPUBLIC OF KOREA; eChalk, New York, NY; Miami-Dade College—Virtual College, Miami, FL; National Labor College, Silver Spring, MD; and Western Governors University, Salt Lake City, UT, have been added as parties to this venture.

Also, Adaptive Technology Resource Centre (University of Toronto), Toronto, Ontario, CANADA, has withdrawn as a party to this venture. In addition, GIUNTI Interactive Labs S.r.l. has

changed its name to exact learning solutions, Genoa, ITALY.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IMS Global Learning Consortium, Inc. intends to file additional written notifications disclosing all changes in membership.

On April 7, 2000, INS Global Learning Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on July 13, 2010. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 18, 2010 (75 FR 51114).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 2010–27370 Filed 10–28–10; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cooperative Research Group on Clean Diesel V

Notice is hereby given that, on October 7, 2010, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute—Cooperative Research Group on Clean Diesel V ("Clean Diesel V") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, BP International Limited, Sunbury-on-Thames, Middlesex, UNITED KINGDOM, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Clean Diesel V intends to file additional written notifications disclosing all changes in membership.

On January 10, 2008, Clean Diesel V filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 25, 2008 (73 FR 10064).

The last notification was filed with the Department on December 10, 2009. A notice was published in the **Federal Register** on January 27, 2010 (75 FR 4422).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 2010–27371 Filed 10–28–10; 8:45 am]

BILLING CODE 4410–41–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Record of Hydrostatic Testing Provision of the Standard on Portable Fire Extinguishers

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) hereby announces submission of the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR), "Hydrostatic Testing Provision of the Standard on Portable Fire Extinguishers," to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, 44 U.S.C. chapter 35.

DATES: Submit comments on or before November 29, 2010.

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 from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain* or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6881/Fax: 202–395–5806 (these are not toll-free numbers), e-mail: *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 e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The DOL is seeking OMB reauthorization of the recordkeeping requirements related to the hydrostatic testing provision of the standard on portable fire extinguishers. More specifically, as evidence of completing the test, it is mandatory for the person performing the test to record his or her name, the date of the test, and the identifier of the extinguisher tested.

This recordkeeping requirement constitutes an information collection within the meaning of 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 currently 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 if the collection of information does not display a currently valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

The DOL obtains approval for this information collection under OMB Control Number 1218–0218, and the current approval is scheduled to expire on October 31, 2010. For additional information, see the related notice published in the **Federal Register** on August 11, 2010 (75 FR 48728).

The DOL, as part of its continuing effort to reduce paperwork and respondent burden, submits information collections for OMB consideration after conducting a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the PRA. *See* 44 U.S.C. 3506(c)(2)(A). This program ensures that information is in the desired format, reporting burden (time and cost) is minimal, collection instruments are clearly understood, and the estimate of the information collection burden is accurate.

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 ensure appropriate consideration, comments should

reference OMB Control Number 1218–0218. 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: Occupational Safety and Health Administration (OSHA).

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Hydrostatic Testing Provision of the Standard on Portable Fire Extinguishers.

Form Number: None.

OMB Control Number: 1218–0218.

Affected Public: Private sector; business or other for-profit organizations.

Total Estimated Number of Respondents: 9,066,000.

Total Estimated Number of Responses: 1,335,724.

Total Estimated Annual Burden Hours: 124,084.

Total Estimated Annual Costs Burden: $16,696,550.

Dated: October 25, 2010.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2010–27379 Filed 10–28–10; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Student Data Form

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) hereby announces the submission of the information collection request (ICR) sponsored by the Occupational Safety and Health Administration (OSHA) titled, "Student Data Form," to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, 44 U.S.C. chapter 35.

DATES: Submit comments on or before November 29, 2010.

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 from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain* or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6881/Fax: 202–395–5806 (these are not toll-free numbers), e-mail: *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 e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The DOL is seeking OMB reauthorization of the OSHA-sponsored Student Data Form, OSHA Form 182. The DOL, as part of its continuing effort to reduce paperwork and respondent burden, submits information collections for OMB consideration after conducting a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the PRA. *See* 44 U.S.C. 3506(c)(2)(A). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and the estimate of the information collection burden is accurate.

The Occupational Safety and Health Act of 1970 (OSH Act) authorizes the OSHA to conduct education and training courses. *See* 29 U.S.C. 670. These courses must educate an adequate number of qualified personnel to fulfill the purposes of the OSH Act, provide them with short-term training, inform them of the importance and proper use of safety and health equipment, and train employers and workers to recognize, avoid, and prevent unsafe and unhealthful working conditions. The OSHA Training Institute provides basic, intermediate, and advanced training and education in occupational safety and health for Federal and State compliance officers, OSHA professionals and technical-support personnel, employers, workers, organizations representing workers and employers, educators who develop curricula and teach occupational safety and health courses, and representatives of professional safety and health groups.

Students attending OSHA Training Institute courses complete a one-page Student Data Form on the first day of class. The Student Data Form collects information under five major categories; course information, personal data, employer data, emergency contacts, and student groups. The OSHA uses information provided on the Student Data Form to contact a designated person in case of an emergency, to prepare certain OSH Act-required reports, tuition receipts, to evaluate training output, and to make decisions regarding program/course revisions, budget support, and tuition costs.

The Student Data Form constitutes an information collection within the meaning of the PRA. A Federal agency generally cannot conduct or sponsor a collection of information unless it is currently approved by the OMB under the PRA and displays a currently valid OMB Control Number. Furthermore, the public is generally not required to respond to a collection of information unless it 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 if the collection of information does not display a currently valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

The DOL obtains approval for this information collection under OMB Control Number 1218–0172, and the current approval is scheduled to expire on October 31, 2010. For additional information, see the related notice published in the **Federal Register** on July 8, 2010 (75 FR 39279).

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 ensure appropriate consideration, comments should reference OMB Control Number 1218–

0172. 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: Occupational Safety and Health Administration (OSHA).

Type of Review: Extension of a currently approved collection.

Title of Collection: Student Data Form.

Form Number: OSHA Form 182.

OMB Control Number: 1218–0172.

Affected Public: Individuals; business or other for-profit organizations; Federal government; State, Local, or Tribal governments.

Total Estimated Number of Respondents: 2000.

Total Estimated Number of Responses: 2000.

Total Estimated Annual Burden Hours: 160.

Total Estimated Annual Costs Burden: $0.

Dated: October 14, 2010.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2010–27378 Filed 10–28–10; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,722]

Sojitz Corporation of America, a Subsidiary of Sojitz Corporation, Forest Products Department, Seattle, WA; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated September 23, 2010, by a Washington State workforce official requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of Sojitz Corporation of America, a subsidiary of Sojitz Corporation, Forest Products Department, Seattle, Washington (subject firm). The determination was issued on September 1, 2010. The Department's Notice of Determination was published in the **Federal Register** on September 21, 2010 (75 FR 57517). The workers provide services related to the trade of forest products.

The negative determination was based on the findings that the subject firm did not, during the period under investigation, shift to a foreign country the supply of services like or directly competitive with the services performed by the workers or acquire these services from a foreign country; that the workers' separation, or threat of separation, was not related to any increase in imports of like or directly competitive services; and that the workers did not produce an article or supply a service that was directly used in the production of an article or the supply of service by a firm that employed a worker group that is eligible to apply for TAA based on the aforementioned article or service.

In the request for reconsideration, the petitioners alleged that the subject firm has shifted services to a foreign country.

The Department has carefully reviewed the request for reconsideration and the existing record, and has determined that the Department will conduct further investigation to determine if the petitioning workers meet the eligibility requirements of the Trade Act of 1974, as amended.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 18th day of October 2010.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2010–27388 Filed 10–28–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,572; TA–W–71,572A; TA–W–71,572B; TA–W–71,572C]

Notice of Affirmative Determination Regarding Application for Reconsideration: TA–W–71,572, Severstal Wheeling, Inc., a Subsidiary of Severstal North America, Inc., Martins Ferry, OH; TA–W–71,572A, Severstal Wheeling, Inc., a Subsidiary of Severstal North America, Inc., Yorkville, OH; TA–W–71,572B, Severstal Wheeling, Inc., a Subsidiary of Severstal North America, Inc., Mingo Junction, OH; TA–W–71,572C, Severstal Wheeling, Inc., a Subsidiary of Severstal North America, Inc., Steubenville, OH

By applications dated May 15 and May 21, 2010, United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW), requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of the subject firm. The determination was issued on March 3, 2010, and the Notice of determination was published in the **Federal Register** on April 23, 2010 (75 FR 21363).

The subject workers produce galvanized coil (TA–W–71,572), cold rolled coils and back plate coils (TA–W–71,572A), hot rolled coils (TA–W–71,572B), and cold rolled coils (TA–W–71,572C).

The negative determination was based on the findings that there was no increase in imports of like or directly competitive articles produced at subject facilities and no shift to/acquisition from a foreign country by the subject firm of like or directly competitive articles produced at the subject facilities.

The investigation also revealed that the firm did not produce an article or supply a service that was used by a firm with TAA-certified workers in the production of an article or supply of a service that was the basis for TAA certification.

The Department of Labor has carefully reviewed the request for reconsideration and the existing record, and has determined that the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 15th day of October 2010.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2010–27381 Filed 10–28–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,729]

International Paper, Pineville Mill, Industrial Packaging Group, Pineville, LA; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated November 2, 2009, the company official from the subject firm requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of the subject firm. The determination was issued on August 20, 2010 and the Notice of Determination was published in the **Federal Register** on September 3, 2010 (75 FR 54187).

The initial investigation resulted in a negative determination based on the findings that neither the subject firm nor any of its customers imported articles like or directly competitive with uncoated freesheet containerboard produced by the subject firm nor did the subject firm shift production to a foreign country or acquire from another country articles like or directly competitive with the uncoated freesheet containerboard produced at the subject firm. The initial investigation also revealed that the subject firm did not produce a component part that was used by a firm that employed a worker group that is currently eligible to apply for TAA and that directly incorporated the containerboard in the production of the article that was the basis for the TAA certification.

In request for reconsideration, the subject firm provided new information in regard to the product produced by the subject firm.

The Department of Labor has carefully reviewed the request for reconsideration and the existing record, and has determined that the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 15th day of October 2010.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2010–27383 Filed 10–28–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,479]

Enesco, LLC, Gund Division, Distribution Center, Edison, NJ; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated October 5, 2010, by an Illinois State workforce official requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of Enesco, LLC, Gund Division, Distribution Center, Edison, New Jersey (subject firm). The determination was issued on August 27, 2010. The Department's Notice of Determination was published in the **Federal Register** on September 15, 2010 (75 FR 56144). The workers are engaged in activities related to the supply of packaging and distribution services related to giftware products.

The negative determination was based on the findings that the subject firm did not, during the period under investigation, shift to a foreign country the supply of services like or directly competitive with the services performed by the workers or acquire these services from a foreign country; that the workers' separation, or threat of separation, was not related to any increase in imports of like or directly competitive services; and that the workers did not produce an article or supply a service that was directly used in the production of an article or the supply of service by a firm that employed a worker group that is eligible to apply for TAA based on the aforementioned article or service.

In the request for reconsideration, the petitioner stated that the petition was filed on behalf of a worker who worked within a separate department at a separate location and that the services performed by the aforementioned department and location have shifted to a foreign country.

The Department has carefully reviewed the request for reconsideration and the existing record, and has determined that the Department will conduct further investigation to determine if the petitioning workers meet the eligibility requirements of the Trade Act of 1974, as amended.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 18th day of October 2010.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2010–27385 Filed 10–28–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,993]

TTM Technologies, Including On-Site Leased Workers From Kelly Services, Aerotek, and an On-Site Leased Worker From Orbotech, Inc., Redmond, WA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on January 23, 2008, applicable to workers of TTM Technologies, Redmond, Washington. The notice was published in the **Federal Register** on March 25, 2009 (74 FR 12901).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of printed circuit boards.

New information shows that a worker leased from Orbotech, Inc. was employed on-site at TTM Technologies, Redmond, Washington. The Department has determined that this worker was sufficiently under the control of TTM Technologies, Redmond, Washington to be considered a leased worker.

Based on these findings, the Department is amending this certification to include a worker leased from Orbotech, Inc., working on-site at the Redmond, Washington location of the TTM Technologies.

The amended notice applicable to TA–W–64,993 is hereby issued as follows:

"All workers TTM Technologies, including on-site leased workers from Kelly Services and Aerotek, and including an on-site leased worker from Orbotech, Inc., Redmond, Washington, who became totally or partially separated from employment on or after January 23, 2008 through March 11, 2011, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974."

Signed at Washington, DC this 8th day of October 2010.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2010–27380 Filed 10–28–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,874]

The Wise Company, Inc. (B&M Seating), 3750 Industrial Drive, Carlyle, IL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 29, 2010, applicable to workers of The Wise Company, Inc., Memphis, Tennessee. The notice was published in the **Federal Register** on October 15, 2010 (75 FR 63510).

At the request of a State workforce official, the Department reviewed the certification for workers of the subject firm. The Wise Company, Inc. workers are engaged in activities related to the production of boat seats.

New information shows that the Department did not correctly state the subject firm location on the certification decision. The correct location of the subject firm should read 3750 Industrial Drive, Carlyle, Illinois.

Accordingly, the Department is amending this certification to correct the location of the subject firm to read 3750 Industrial Drive, Carlyle, Illinois.

The amended notice applicable to TA–W–73,874 is hereby issued as follows:

All workers of The Wise Company, (B & M Seating), 3750 Industrial Drive, Carlyle, Illinois, who became totally or partially separated from employment on or after April 6, 2009, through September 29, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 21st day of October 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–27390 Filed 10–28–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,630]

Pricewaterhousecoopers LLP ("PwC"), Internal Firm Services Client Account Administrators Group Atlanta, GA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 20, 2010, applicable to workers of PricewaterhouseCoopers LLP, Division of Internal Firm Services, Atlanta, Georgia. The notice was published in the **Federal Register** on June 7, 2010 (75 FR 32224).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers supply internal firm services.

New information shows that the Department did not correctly state the subject firm name in its entirety on the certification decision. The correct name of the subject firm should read PricewaterhouseCoopers LLP ("PwC"), Internal Firm Services Client Account Administrators Group.

Accordingly, the Department is amending this certification to correct the name of the subject firm to read PricewaterhouseCoopers LLP ("PwC"), Internal Firm Services Client Account Administrators Group.

The amended notice applicable to TA–W–73,630 is hereby issued as follows:

All workers of PricewaterhouseCoopers LLP ("PwC"), Internal Firm Services Client Account Administrator Group, Atlanta, Georgia, who became totally or partially separated from employment on or after March 2, 2009, through May 20, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC this 20th day of October 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–27387 Filed 10–28–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,806]

Multina, USA, Including On-Site Leased Workers From Westaff, Plattsburgh, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 10, 2010, applicable to workers of Multina, USA, Plattsburgh, New York. The notice was published in the **Federal Register** on August 30, 2010 (75 FR 52984).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in employment related to the production of rail car interiors.

New information shows that workers leased from Westaff were employed on-site at the Plattsburgh, New York location of Multina, USA. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Westaff working on-site at the

Plattsburgh, New York location of Multina, USA.

The amended notice applicable to TA–W–73,806 is hereby issued as follows:

All workers of Multina, USA, including on-site leased workers from Westaff, Plattsburgh, New York, who became totally or partially separated from employment on or after March 18, 2009, through August 10, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 21st day of October 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–27389 Filed 10–28–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,608]

PricewaterhouseCoopers LLP (“PwC”) Internal Firm Services Client Account Administrators Group, Charlotte, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (“Act”), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 1, 2010, applicable to workers of PricewaterhouseCoopers LLP (“PwC”), Internal Firm Services (“IFS”) Group, Charlotte, North Carolina. The notice was published in the **Federal Register** on September 21, 2010 (75 FR 57515).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The IFS workers supply professional services and public accounting services.

New information shows that the Department did not correctly state the subject firm name in its entirety on the certification decision. The correct name of the subject firm should read PricewaterhouseCoopers LLP (“PwC”), Internal Firm Services Client Account Administrators Group.

Accordingly, the Department is amending this certification to correct the name of the subject firm to read PricewaterhouseCoopers LLP (“PwC”), Internal Firm Services Client Account Administrators Group.

The amended notice applicable to TA–W–73,608 is hereby issued as follows:

All workers of PricewaterhouseCoopers LLP (“PwC”), Internal Firm Services Client Account Administrator Group, Charlotte, North Carolina, who became totally or partially separated from employment on or after February 26, 2009, through September 1, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 20th day of October 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–27386 Filed 10–28–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,871]

Watts Regulator, Including On-Site Leased Workers From Employment Control, D/B/A Employment Staffing, Inc., Spindale, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (“Act”), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 27, 2010, applicable to workers of Watts Regulator, including on-site leased workers from Employment Staffing, Inc., Spindale, North Carolina. The notice was published in the **Federal Register** on June 16, 2010 (75 FR 34174).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the production of valves, flexible PVC tubing, and injection molded rigid PVC tubing.

New information shows that on-site leased workers from Employment Staffing, Inc. separated from employment at the Spindale, North Carolina location of Watts Regulator, had their wages reported under a separate unemployment insurance (UI) tax account under their parent firm, Employment Control, D/B/A Employment Staffing.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department’s certification is to include all workers of the subject firm who were adversely affected by increased customer imports of valves, flexible PVC tubing and injection molded rigid PVC tubing.

The amended notice applicable to TA–W–71,871 is hereby issued as follows:

All workers of Watts Regulator, including on-site leased workers from Employment Control, d/b/a Employment Staffing, Inc., Spindale, North Carolina, who became totally or partially separated from employment on or after July 30, 2008, through May 27, 2012, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 21st day of October 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–27382 Filed 10–28–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0012]

National Advisory Committee on Occupational Safety and Health (NACOSH), Charter Renewal

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of renewal of the NACOSH charter.

SUMMARY: The Secretary of Labor has renewed the charter of the National Advisory Committee on Occupational Safety and Health (NACOSH) for two years.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Crawford, OSHA Directorate of Evaluation and Analysis, Room N–3641, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1932.

SUPPLEMENTARY INFORMATION:

The Secretary of Labor (Secretary) has renewed the NACOSH charter. The charter will expire two years from today.

NACOSH was established by Section 7(a) of the Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651, 656) to advise, consult with,

and make recommendations to the Secretary and the Secretary of Health and Human Services on matters relating to the administration of the OSH Act. Under the OSH Act, Congress intended NACOSH to be a continuing advisory committee of indefinite duration.

NACOSH operates in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) and OSHA's regulations on NACOSH (29 CFR part 1912a). Pursuant to FACA and its implementing regulations (41 CFR 102–3), the NACOSH charter must be renewed every two years. The charter expires two years from the date it is signed and filed.

To read or download a copy of the new NACOSH charter, go to Docket No. OSHA–2010–0012 at *http://www.regulations.gov,* the Federal eRulemaking Portal. The charter also is available on the NACOSH page on OSHA's Web page at *http://www.osha.gov* and at the OSHA Docket Office, N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350. In addition, the charter may be viewed or downloaded at the Federal Advisory Committees Database at *http://www.fido.gov.*

Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by Sections 6(b) and 7(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 656), the Federal Advisory Committee Act (5 U.S.C. App. 2), 29 CFR part 1912a, 41 CFR 102–3, and Secretary of Labor's Order 4—2010 (75 FR 55355 (9/10/2010)).

Signed at Washington, DC, on October 26, 2010.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2010–27439 Filed 10–28–10; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,743]

Ormet Primary Aluminum Corporation Including On-Site Temporary Workers, Hannibal, OH; Notice of Revised Determination on Reconsideration

By application dated March 11, 2010, a company official requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of Ormet Primary Aluminum Corporation, including on-site temporary workers, Hannibal, Ohio (subject firm) to apply for Trade Adjustment Assistance.

The initial investigation, initiated November 3, 2009, resulted in a negative determination, issued on February 16, 2010, that was based on the finding that imports did not contribute importantly to worker separations at the subject firm and no shift in production to a foreign country occurred. The notice of negative determination was published in the **Federal Register** on March 12, 2010 (75 FR 11925).

To support the request for reconsideration, the petitioner supplied additional information regarding overall United States production, consumption, and importation of primary and secondary aluminum to supplement that which was gathered during the initial investigation.

During the reconsideration investigation, the Department of Labor examined the petitioner's allegations and obtained current aggregate data on aluminum production and imports through 2009 which was not available during the original investigation period.

An analysis of that data shows that the ratio of U.S. imports to U.S. shipments of aluminum (primary and secondary) increased significantly from 2008 to 2009, reaching a level well over 100 percent in 2009. This increased reliance on aggregate imports of aluminum contributed importantly to the layoffs at the subject facility.

Conclusion

After careful review of the additional facts obtained on reconsideration, I determine that workers of Ormet Primary Aluminum Corporation, including on-site temporary workers, Hannibal, Ohio, who were engaged in employment related to the production of primary aluminum, meet the worker group certification criteria under Section 222(a) of the Act, 19 U.S.C. 272(a). In accordance with Section 223 of the Act, 19 U.S.C. 2273, I make the following certification:

"All workers of Ormet Primary Aluminum Corporation, including on-site temporary workers, Hannibal, Ohio, who became totally or partially separated from employment on or after October 27, 2008, through two years from the date of this certification, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended."

Signed in Washington, DC, this 21st day of October, 2010.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2010–27384 Filed 10–28–10; 8:45 am]

BILLING CODE 4510–FN–P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 2010–6 CRB CD 2008]

Distribution of the 2008 Cable Royalty Funds

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice requesting comments.

SUMMARY: The Copyright Royalty Judges are soliciting comments on a motion of Phase I claimants for partial distribution in connection with the 2008 cable royalty funds. The Judges are also requesting comments as to the existence of Phase I and Phase II controversies with respect to the distribution of 2008 cable royalty funds.

DATES: Comments are due on or before November 29, 2010.

ADDRESSES: Comments may be sent electronically to *crb@loc.gov.* In the alternative, send an original, five copies, and an electronic copy on a CD either by mail or hand delivery. Please do not use multiple means of transmission. Comments may not be delivered by an overnight delivery service other than the U.S. Postal Service Express Mail. If by mail (including overnight delivery), comments must be addressed to: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977. If hand delivered by a private party, comments must be brought to the Library of Congress, James Madison Memorial Building, LM–401, 101 Independence Avenue, SE., Washington, DC 20559–6000. If delivered by a commercial courier, comments must be delivered to the Congressional Courier Acceptance Site located at 2nd and D Street, NE., Washington, DC. The envelope must be addressed to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–403, 101 Independence Avenue, SE., Washington, DC 20559–6000.

FOR FURTHER INFORMATION CONTACT: Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney Advisor, by

telephone at (202) 707–7658 or e-mail at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: Each year cable systems must submit royalty payments to the Register of Copyrights as required by the statutory license set forth in section 111 of the Copyright Act for the retransmission to cable subscribers of over-the-air television and radio broadcast signals. *See* 17 U.S.C. 111(d). These royalties are then distributed to copyright owners whose works were included in a qualifying transmission and who timely filed a claim for royalties. Allocation of the royalties collected occurs in one of two ways. In the first instance, these funds will be distributed through a negotiated settlement among the parties. 17 U.S.C. 111(d)(4)(A). If the claimants do not reach an agreement with respect to the royalties, the Copyright Royalty Judges ("Judges") must conduct a proceeding to determine the distribution of any royalties that remain in controversy. 17 U.S.C. 111(d)(4)(B).

On September 22, 2010, representatives of the Phase I claimant categories (the "Phase I Parties") [1] filed with the Judges a motion requesting a partial distribution of 50% of the 2008 cable royalty funds pursuant to Section 801(b)(3)(C) of the Copyright Act. 17 U.S.C. 801(b)(3)(C). Under that section of the Copyright Act, before ruling on a partial distribution motion the Judges must publish a notice in the **Federal Register** seeking responses to the motion to ascertain whether any claimant entitled to receive such royalty fees has a reasonable objection to the proposed distribution. Consequently, this Notice seeks comments from interested claimants on whether any reasonable objection exists that would preclude the distribution of 50% of the 2008 cable royalty funds to the Phase I Parties. The Judges must be advised of the existence and extent of all such objections by the end of the comment period. The Judges will not consider any objections with respect to the partial distribution motion that come to their attention after the close of that period.

The Judges also seek comment on the existence and extent of any controversies to the 2008 cable royalty funds at Phase I or Phase II with respect to those funds that would remain if the partial distribution is granted.

The Motion of Phase I Claimants for Partial Distribution is posted on the Copyright Royalty Board Web site at *http://www.loc.gov/crb.*

Dated: October 20, 2010.

James Scott Sledge,

Chief U.S. Copyright Royalty Judge.

[FR Doc. 2010–27332 Filed 10–28–10; 8:45 am]

BILLING CODE 1410–72–P

[1] The "Phase I Parties" are the Program Suppliers, Joint Sports Claimants, Public Television Claimants, Commercial Television Claimants (represented by National Association of Broadcasters), Music Claimants (represented by American Society of Composers, Authors and Publishers, Broadcast Music, Inc., and SESAC, Inc.), Canadian Claimants, National Public Radio, and the Devotional Claimants. In Phase I of a cable royalty distribution proceeding, royalties are allocated among certain categories of broadcast programming that have been retransmitted by cable systems. The categories have traditionally been movies and syndicated television series, sports programming, commercial and noncommercial broadcaster-owned programming, religious programming, music, public radio programming, and Canadian programming. In Phase II of a cable royalty distribution proceeding, royalties are allocated among claimants within each of the Phase I categories.

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 2010–7 CRB SD 2008]

Distribution of the 2008 Satellite Royalty Funds

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice requesting comments.

SUMMARY: The Copyright Royalty Judges are soliciting comments on a motion of Phase I claimants for partial distribution in connection with the 2008 satellite royalty funds. The Judges are also requesting comments as to the existence of Phase I and Phase II controversies with respect to the distribution of 2008 satellite royalty funds.

DATES: Comments are due on or before November 29, 2010.

ADDRESSES: Comments may be sent electronically to *crb@loc.gov.* In the alternative, send an original, five copies, and an electronic copy on a CD either by mail or hand delivery. Please do not use multiple means of transmission. Comments may not be delivered by an overnight delivery service other than the U.S. Postal Service Express Mail. If by mail (including overnight delivery), comments must be addressed to: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977. If hand delivered by a private party, comments must be brought to the Library of Congress, James Madison Memorial Building, LM–401, 101 Independence Avenue, SE., Washington, DC 20559–6000. If delivered by a commercial courier, comments must be delivered to the Congressional Courier Acceptance Site located at 2nd and D Street, NE., Washington, DC. The envelope must be addressed to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–403, 101 Independence Avenue, SE., Washington, DC 20559–6000.

FOR FURTHER INFORMATION CONTACT: Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney Advisor, by telephone at (202) 707–7658 or e-mail at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: On October 6, 2010, representatives of the Phase I claimant categories (the "Phase I Claimants") [1] filed with the Judges a motion requesting a partial distribution of 50% of the 2008 satellite royalty funds pursuant to section 801(b)(3)(C) of the Copyright Act. 17 U.S.C. 801(b)(3)(C). That section requires that the Judges publish a notice in the **Federal Register** seeking responses to the motion for partial distribution to ascertain whether any claimant entitled to receive such fees has a reasonable objection to the requested distribution before ruling on the motion. Consequently, this Notice seeks comments from interested claimants on whether any reasonable objection exists that would preclude the distribution of 50% of the 2008 satellite royalty funds to the Phase I Claimants. The Judges must be advised of the existence and extent of all such objections by the end of the comment period. The Judges will not consider any objections with respect to the partial distribution motion that come to their attention after the close of that period.

The Judges also seek comment on the existence and extent of any controversies to the 2008 satellite royalty funds at Phase I or Phase II with respect to those funds that would remain if the motion for partial distribution is granted.

The Motion of the Phase I Claimants for Partial Distribution is posted on the Copyright Royalty Board Web site at *http://www.loc.gov/crb.*

[1] The "Phase I Claimants" are the Program Suppliers, Joint Sports Claimants, Broadcaster Claimants Group, Music Claimants (American Society of Composers, Authors and Publishers, Broadcast Music, Inc., and SESAC, Inc.), and Devotional Claimants. In Phase I of a satellite royalty distribution proceeding, royalties are allocated among certain categories of broadcast programming that have been retransmitted by satellite systems. The categories have traditionally been movies and syndicated television series, sports programming, commercial broadcaster-owned programming, religious programming, and music. Public Television Claimants, Canadian Claimants, and National Public Radio, which traditionally have received Phase I shares of cable royalties, do not claim Phase I shares of the satellite royalty funds. In Phase II of a satellite royalty distribution proceeding, royalties are allocated among claimants within each of the Phase I categories.

Dated: October 25, 2010.

James Scott Sledge,

Chief U.S. Copyright Royalty Judge.

[FR Doc. 2010–27333 Filed 10–28–10; 8:45 am]

BILLING CODE 1410–72–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE: (10–143)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, 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 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Lori Parker, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Lori Parker, NASA PRA Officer, NASA Headquarters, 300 E Street, SW., JF0000, Washington, DC 20546, (202) 358–1351, *Lori.Parker@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

As required in Section 305(b) of the National Aeronautics and Space Act of 1958 and the NASA Supplement to the Federal Acquisition Regulation, NASA R&D contracts require contractor/recipient reporting of new technologies to NASA using NASA eNTRe system for electronic submissions and NASA Form 1679 for paper submissions.

II. Method of Collection

NASA will utilize a Web-base on-line form to collect this information. Approximately 65 per cent of the responses will be collected electronically.

III. Data

Title: AST–Technology Utilization.

OMB Number: 2700–0009.

Type of Review: Regular.

Affected Public: Business or other for-profit and not-for profit institutions.

Estimated Number of Respondents: 1,283.

Estimated Time per Response: 1 hour for manual responses and 0.75 hour for electronic responses.

Estimated Total Annual Burden Hours: 1,075.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Lori Parker,

NASA PRA Clearance Officer

[FR Doc. 2010–27447 Filed 10–28–10; 8:45 am]

BILLING CODE P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10–142)]

National Environmental Policy Act; Wallops Flight Facility Shoreline Restoration and Infrastructure Protection Program

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of availability of the Final Programmatic Environmental Impact Statement (PEIS) for the Wallops Flight Facility (WFF) Shoreline Restoration and Infrastructure Protection Program (SRIPP).

SUMMARY: Pursuant to the National Environmental Policy Act, as amended, (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508), and NASA's NEPA policy and procedures (14 CFR Part 1216, subpart 1216.3), NASA has prepared and issued the Final PEIS for the proposed SRIPP at WFF. The U.S. Department of the Interior, Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE), and the U.S. Army Corps of Engineers have served as Cooperating Agencies in preparing the Final PEIS.

NASA is proposing to implement a fifty-year design-life storm damage reduction project at its WFF on Wallops Island, Virginia. WFF is continuously faced with storm damage resulting in the implementation of emergency repairs. The project would be conducted to reduce the need for these emergency repairs and the potential for storm-induced physical damage to the over $1 billion in Federal and State assets on Wallops Island. The Final PEIS examines in detail three project action alternatives, each expected to provide substantial damage reduction from storms with intensities ranging up to approximately the 100-year return interval storm. Although some reduction in flooding can be expected under each alternative, the primary purpose of the proposal is not flood protection, rather it is moving destructive wave energy further away from the Wallops Island shoreline and the infrastructure behind it.

Alternative One, NASA's preferred alternative, would include extending the existing Wallops Island seawall up to a maximum of 1,400 meters (m) (4,600 feet [ft]) south and placing an estimated 2.5 million cubic meters (MCM) (3.2 million cubic yards [MCY]) along the shoreline. Alternative Two would include the same seawall extension as Alternative One; however the sand placed along the shoreline would be less at approximately 2.2 MCM (2.9 MCY). Under this alternative, NASA would also construct a groin perpendicular to the shoreline at the south end of the project site to limit the volume of nearshore sand being transported from the restored Wallops Island beach to the south. Alternative Three would entail the same seawall extension as in Alternatives One and Two; however sand placement would be the least of the Alternatives at approximately 2.1 MCM (2.8 MCY). NASA would construct a single detached breakwater parallel to the shoreline at the south end of the project site to retain sand under Alternative Three. Under all three project alternatives, NASA would obtain the sand required for its initial beach nourishment from an unnamed shoal (referred to as Shoal A) located in Federal waters approximately 23 kilometers (km) (14 miles [mi]) east of Wallops Island. Sand for an expected nine future renourishment cycles could

come from either Shoal A or a second offshore shoal in Federal waters referred to as Shoal B, approximately 31 km (19 mi) east of the project site. Additionally, NASA is considering transporting sand that accumulates on north Wallops Island to supplement its future renourishment needs (commonly known as "backpassing"). It is estimated that up to half of the required renourishment volumes could be obtained from "backpassing." The No Action Alternative is to not implement the WFF SRIPP, but to continue making emergency repairs to the existing Wallops Island seawall and infrastructure, as necessary.

DATES: NASA will issue a Record of Decision (ROD) for the proposed SRIPP based on the Final PEIS no sooner than 30 days from the date of publication in the **Federal Register** of the U.S. Environmental Protection Agency's Notice of Availability of the Final PEIS.

ADDRESSES: The Final PEIS may be reviewed at the following locations:

(a) Chincoteague Island Library, 4077 Main Street, Chincoteague, Virginia 23336 (757–336–3460).

(b) Eastern Shore Public Library, 23610 Front Street, Accomac, Virginia 23301 (757–787–3400).

(c) Northampton Free Library, 7745 Seaside Road, Nassawadox, Virginia 23413 (757–414–0010).

(d) NASA Wallops Flight Facility Technical Library, Building E–105, Wallops Island, Virginia 23337 (757–824–1065).

(e) NASA Headquarters Library, Room 1J20, 300 E Street, SW., Washington, DC 20546–0001 (202–358–0168).

A limited number of hard copies of the Final PEIS are available, on a first request basis, by contacting Joshua Bundick, NASA WFF, Environmental Office, Code 250.W, Wallops Island, Virginia 23337; telephone 757–824–2319; or electronic mail at *Joshua.A.Bundick@nasa.gov.*

The Final SRIPP PEIS is available on the Internet in Adobe® portable document format at *http://sites.wff.nasa.gov/code250/shoreline_eis.html.* NASA's ROD will be made available, once issued, on the same Web site as above and by request to the contact provided above.

FOR FURTHER INFORMATION CONTACT: Additional information on the WFF SRIPP can be obtained by addressing an e-mail to *wff_shoreline_eis@majordomo.gsfc.nasa.gov* or by mailing to 250/NEPA Manager, WFF Shoreline Restoration and Infrastructure Protection Program, NASA Goddard Space Flight Center's Wallops Flight Facility, Wallops Island, Virginia 23337. Additional information about the WFF SRIPP and NASA's NEPA process may be found on the internet at *http://sites.wff.nasa.gov/code250/shoreline_eis.html.*

SUPPLEMENTARY INFORMATION: The Final PEIS addresses the environmental impacts associated with NASA's proposed implementation of a 50-year design-life storm damage reduction program along the shoreline of Wallops Island. The environmental impacts of principal concern are those that could result from dredging sand from offshore shoals, removing sand from north Wallops Island, and from the construction of a sand retention structure at the south end of the project site.

The three action alternatives considered in the Final PEIS would all provide the facilities on Wallops Island equal levels of storm damage reduction for the duration of the program. Each alternative would involve the establishment of an approximately 34 m (110 ft) wide dry beach along approximately 6,000 m (19,700 ft) of the Wallops Island shoreline to serve as a primary line of defense from destructive storm waves. In addition to the beach, a sand dune would be created to cover the ocean side of the existing and proposed seawall. The remaining portion of the fill would be placed underwater and would gradually slope to the east. It is expected that the fill alone would provide considerable damage reduction from a 30-year return interval storm. With the fill combined with the rock seawall, the project would provide substantial infrastructure damage reduction from up to an approximately 100-year return interval storm. A rock sand retention structure (a groin or breakwater) is included under Alternatives Two and Three, respectively, to slow the transport of sand from the project site and potentially reduce the amount of beach fill needed both initially and throughout the lifecycle of the project.

All three alternatives would involve an initial construction phase and future follow-on maintenance cycles. The initial construction phase would likely include three distinct elements spanning three fiscal years:

Year 1 Activities—The existing rock seawall would be extended approximately 400 m (1,315 ft) south. Additional lengthening (up to the 1,400 m [4,600 ft] total length) would be accomplished in future years as funding becomes available.

Year 2 Activities—Approximately one third of the sand necessary for beach nourishment would be placed along the Wallops Island shoreline. Work would likely begin at the south end of the project site and would gradually move north. Sand placement would involve removing sand from Shoal A by hopper dredges and pumping the material onto the beach.

Year 3 Activities—The remaining sand needed to complete the beach nourishment would be placed along the Wallops Island shoreline. Additionally, under Alternatives Two and Three, the sand retention structure would be constructed.

Subsequent beach renourishment cycles would vary throughout the lifecycle of the proposed project. Factors dictating the frequency and magnitude of such actions would include project performance as revealed through ongoing monitoring, storm severity and frequency, and availability of funding. For each of the action alternatives considered in the PEIS, the renourishment cycle is anticipated to be every five years, totaling nine cycles over the fifty year design life of the project.

In addition to the construction activities outlined for each of the three action alternatives, NASA would implement a rigorous monitoring program that would begin with construction in Year 1 and continue throughout the project. The intent of the monitoring program is to measure the performance of the project, and through adaptive management, make informed decisions regarding the need for renourishment, sand retention structures, and future storm damage reduction measures.

Despite the programmatic nature of the PEIS, NASA included detailed information on the three action alternatives that it is considering for the SRIPP. Given the severity of shoreline erosion at Wallops Island and WFF's vulnerability to storms, it is imperative that a storm damage reduction project be implemented as soon as possible. As a result, this PEIS includes such detail as structure dimensions and locations so that the selected alternative could be implemented and permitted without the need for additional NEPA documentation. In addition to structure dimensions and locations, this information includes beach fill volumes, dredging locations, and dredging operations. Proposed sand retention structures have been modeled and potential impacts evaluated at specific locations within the project area based on current conditions at Wallops Island. Utilizing an adaptive management approach, NASA would evaluate future actions that may include variations of the alternatives evaluated in the PEIS.

Given the dynamic nature of the ocean environment, and that exact locations and magnitude of renourishment cycles may fluctuate, additional NEPA documentation for subsequent actions may be prepared in the future, as appropriate.

NASA published a Notice of Availability (NOA) of the *Draft SRIPP Programmatic Environmental Impact Statement* on February 26, 2010 (75 FR 8997). NASA mailed over 125 hard copies and/or compact disks (CDs) of the Draft PEIS to potentially interested Federal, State, and local agencies; organizations; and individuals. In addition, the Draft PEIS was made publicly available in electronic format on NASA's Web site. The public review and comment period for the Draft PEIS closed on April 19, 2010. NASA received a total of 12 submissions (letters and e-mails) from Federal, State, and local agencies; organizations; individuals; and its Independent Technical Review team. The resulting 315 individual comments received spanned a broad range of topics; however the majority of commentors expressed concern regarding effects of the project on wildlife, fisheries, and sediment transport. The comments are addressed in the Final PEIS in Appendix N. NASA also formally consulted with resource agencies regarding potential effects of the program on Federally threatened and endangered species, Essential Fish Habitat, cultural and historic resources, and coastal resources. The outcomes of these consultations are summarized in the Final PEIS and are also included as appendices.

Olga M. Dominguez,

Assistant Administrator for Strategic Infrastructure.

[FR Doc. 2010–27354 Filed 10–28–10; 8:45 am]

BILLING CODE P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

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 extension of a currently approved information collection consisting of National Archives Trust Fund (NATF) Order Forms for Genealogical Research in the National Archives. The NATF forms included in this information collection are: NATF 81, National Archives Order for Copies of Ship Passenger Arrival Records; NATF 82, National Archives Order of Copies of Census Schedules; NATF 83, National Archives Order for Copies of Eastern Cherokee Applications; NATF 84, National Archives Order for Copies of Land Entry Files; NATF 85, National Archives Order for Copies of Pension or Bounty Land Warrant Applications; and NATF 86, National Archives Order for Copies of Military Service Records. The public is invited to comment on the proposed information collections pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before December 28, 2010 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), 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 collections and supporting statements 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 all 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 collections:

Title: Order Forms for Genealogical Research in the National Archives.

OMB number: 3095–0027.

Agency form numbers: NATF Forms 81, 82, 83, 84. 85, and 86.

Type of review: Regular.

Affected public: Individuals or households.

Estimated number of respondents: 42,515.

Estimated time per response: 10 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 7,086.

Abstract: Submission of requests on a form is necessary to handle in a timely fashion the volume of requests received for these records and the need to obtain specific information from the researcher to search for the records sought. As a convenience, the form will allow researchers to provide credit card information to authorize billing and expedited mailing of the copies. You can also use Order Online (*http://www.archives.gov/research_room/obtain_copies/military_and_genealogy_order_forms.html*) to complete the forms and order the copies.

Dated: October 22, 2010.

Charles K. Piercy,

Acting Assistant Archivist for Information Services.

[FR Doc. 2010–27519 Filed 10–28–10; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–317 and 50–318; NRC–2010–0337]

Calvert Cliffs Nuclear Power Plant, LLC; Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Calvert Cliffs Nuclear Power Plant, LLC, the licensee, to withdraw its January 29, 2010 application for proposed amendment to Facility Operating License Nos. DPR–53 and DPR–69 for the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, located in Calvert County, MD.

The proposed amendment would have revised Technical Specification (TS) 3.4.10, "Pressurizer Safety Valves," by modifying the existing Note within the TS. The Note allows the pressurizer safety valve lift settings to be outside the Limiting Condition for Operation limit as a result of temperature related lift setting drift, while the Unit is in applicable portions of Mode 3.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on April 20, 2010 (75 FR 20630). However, by letter dated October 4, 2010, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated January 29, 2010, as supplemented on July 2, 2010, and the licensee's letter dated October 4, 2010, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 19th day of October 2010.

For the Nuclear Regulatory Commission.

Douglas V. Pickett,

Senior Project Manager, Plant Licensing Branch I–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–27414 Filed 10–28–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Advanced Boiling Water Reactor (ABWR); Notice of Meeting

The ACRS Subcommittee on ABWR will hold a meeting on November 30, 2010, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance except for portions that may be closed to protect information that is proprietary to Westinghouse, Toshiba or any other party pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

November 30, 2010—8:30 a.m. until 12 p.m.

The purpose of this meeting is to review Chapters 2, 7 and 15 of the Safety Evaluation Report (SER) associated with the Combined License Application (COLA) for South Texas Project (STP) Units 3 and 4. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, South Texas Project Nuclear Operating Company, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Maitri Banerjee (Telephone 301–415–6973 or E-mail: *Maitri.Banerjee@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010, (75 FR 65038–65039).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: October 25, 2010.

Cayetano Santos,

Chief, Reactor Safety Branch A, Advisory Committee on Reactor Safeguards.

[FR Doc. 2010–27418 Filed 10–28–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee On Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Evolutionary Power Reactor (EPR); Notice of Meeting

The ACRS Subcommittee on EPR will hold a meeting on November 30, 2010, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, November 30, 2010—8:30 a.m. Until 2 p.m.

The Subcommittee will review Selected Chapters of the US EPR Design Control Document (DCD) (Chapter 13) and the Calvert Cliffs Reference Combined License (RCOL) (Chapters 10, 11, and 16) Safety Evaluation Report (SER) with Open Items. The Subcommittee will hear presentations by and hold discussions with the NRC staff, AREVA, UniStar, and other interested persons. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Derek A. Widmayer (Telephone 301–415–7366 or E-mail: *Derek.Widmayer@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were

published in the **Federal Register** on October 14, 2009, (74 FR 58268–58269).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: October 21, 2010.

Antonio F. Dias,

Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. 2010–27422 Filed 10–28–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee On Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Siting; Notice of Meeting

The ACRS Subcommittee on Siting will hold a meeting on November 30, 2010, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, November 30, 2010—2:30 p.m. until 5 p.m.

The Subcommittee will review the Status of Resolution of GSI–199, "Implications of Updated Probabilistic Seismic Hazard Estimates in Central and Eastern United States on Existing Plants." The Subcommittee will hear presentations by and hold discussions with the NRC staff, and other interested persons. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Derek A Widmayer (Telephone 301–415–7366 or E-mail: *Derek.Widmayer@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the DFO one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 14, 2009, (74 FR 58268–58269).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: October 21, 2010.

Antonio F. Dias,

Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. 2010–27421 Filed 10–28–10; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–1; Order No. 567]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This notice advises the public that the Commission has docketed an appeal of the closing of the Delaware Station in Albany, New York and addresses related procedural steps. It also advises the public that such appeals are subject to certain statutory requirements, including issuance of a Commission opinion within 120 days of receipt of the appeal under consideration, and related Commission rules. The notice includes a procedural schedule.

DATES: Administrative record (or responsive pleading) due: November 5, 2010. Participant's statement or brief due: November 26, 2010. *See* the procedural schedule in this document for additional key dates.

ADDRESSES: Submit documents electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot file electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for advice on alternatives.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6824 or *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to 39 U.S.C. 404(d), the Commission has received an appeal of the closing of the Delaware Station, Albany, New York 12209. The appeal, is postmarked October 19, 2010, and was posted on the Commission's Web site October 21, 2010. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and designates the case as Docket No. A2011–1 to consider the petitioner's appeal. If the petitioner would like to further explain her position with supplemental information or facts, she may either file a Participant Statement on PRC Form 61 or file a brief with the Commission by no later than November 26, 2010.

Categories of issues apparently raised. The categories of issues raised include: Failure to follow the post office closure requirements. *See* 39 U.S.C. 404(d)(1) and Failure to consider effect on the community. *See* 39 U.S.C. 404(d)(2)(A)(i).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the administrative record with the Commission is November 5, 2010. 39 CFR 3001.113.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone

at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., Monday through Friday, except on Federal Government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. 39 CFR 3001.9(a) and 10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site, *http://www.prc.gov,* or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Intervention. Those, other than the petitioner and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111. Notices of intervention in this case are to be filed on or before November 16, 2010. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the administrative record in this appeal, or otherwise file a responsive pleading to the appeal, by November 5, 2010.

2. The procedural schedule listed below is hereby adopted.

3. Pursuant to 39 U.S.C. 505, Robert Sidman is designated officer of the Commission (Public Representative) to represent the interests of the general public.

4. The Secretary shall arrange for publication of this notice and order and procedural schedule in the **Federal Register**.

PROCEDURAL SCHEDULE

October 19, 2010	Filing of Appeal.
November 5, 2010	Deadline for Postal Service to file administrative record in this appeal or responsive pleading.
November 16, 2010	Deadline for petitions to intervene (*see* 39 CFR 3001.111(b)).
November 26, 2010	Deadline for Petitioner's Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
December 16, 2010	Deadline for answering brief in support of Postal Service (*see* 39 CFR 3001.115(c)).
December 31, 2010	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
January 7, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
February 16, 2011	Expiration of the Commission 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2010–27350 Filed 10–28–10; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Existing Collection in Use Without an OMB Number: Rule 8c–1; SEC File No. 270–455; OMB Control No. 3235–0514.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for Approval.

Rule 8c–1 (17 CFR 240.8c–1) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) generally prohibits a broker-dealer from using its customers' securities as collateral to finance its own trading, speculating, or underwriting transactions. More specifically, the rule states three main principles: first, that a broker-dealer is prohibited from commingling the securities of different customers as collateral for a loan without the consent of each customer; second, that a broker-dealer cannot commingle customers' securities with its own securities under the same pledge; and third, that a broker-dealer can only pledge its customers' securities to the extent that customers are in debt to the broker-dealer. *See* Securities Exchange Act Release No. 2690 (November 15, 1940); Securities Exchange Act Release No. 9428 (December 29, 1971). Pursuant to Rule 8c–1, respondents must collect information necessary to prevent the hypothecation of customer accounts in contravention of the rule, issue and retain copies of notices to the pledgee of hypothecation of customer accounts in accordance with the rule, and collect written consents from customers in accordance with the rule. The information is necessary to ensure compliance with the rule, and to advise customers of the rule's protections.

There are approximately 111 respondents per year (*i.e.,* broker-dealers that conducted business with the public, filed Part II of the FOCUS Report, did not claim an exemption from the Reserve Formula computation, and reported that they had a bank loan during at least one quarter of the current year) that require an aggregate total of 2,498 hours to comply with the rule. Each of these approximately 111

registered broker-dealers makes an estimated 45 annual responses, for an aggregate total of 4,995 responses per year. Each response takes approximately 0.5 hours to complete. Thus, the total compliance burden per year is 2,498 burden hours. The approximate cost per hour is $59, resulting in a total cost of compliance for the respondents of approximately $147,382 (2,498 hours @ $59 per hour).

Written 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 proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to: Jeffrey Heslop, Acting Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: October 25, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–27366 Filed 10–28–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29486; File No. 812–13648]

Nationwide Life Insurance Company, *et al.,* Notice of Application

October 25, 2010.

AGENCY: Securities and Exchange Commission (the "Commission").

ACTION: Notice of application for an order of approval pursuant to Section 26(c) of the Investment Company Act of 1940, as amended (the "Act"), and an order of exemption pursuant to Section 17(b) of the Act from Section 17(a) of the Act.

Applicants: Nationwide Life Insurance Company ("NWL"), Nationwide Life and Annuity Insurance Company ("NLAIC") (together with NWL, the "Insurance Companies"), Nationwide Variable Account-II ("Account II"), Nationwide Variable Account-6 ("Account 6"), Nationwide Variable Account-7 ("Account 7"), Nationwide Variable Account-8 ("Account 8"), Nationwide Variable Account-9 ("Account 9"), Nationwide Variable Account-10 ("Account 10"), Nationwide Variable Account-14 ("Account 14"), Nationwide VLI Separate Account-2 ("VLI Account 2"), Nationwide VLI Separate Account-4 ("VLI Account 4"), Nationwide VLI Separate Account-7 ("VLI Account 7"), Nationwide Provident VA Separate Account 1 ("Account P–1"), Nationwide Provident VLI Separate Account 1 ("VLI Account P–1"); Nationwide VA Separate Account-B ("Account B"), Nationwide VL Separate Account-G ("Account G"), Nationwide Provident VA Separate Account A ("Account P–A"), and Nationwide Provident VLI Separate Account A ("VLI Account P–A") (together with Accounts II, 6, 7, 8, 9, 10, 14, P–1, B, G, and P–A along with VLI Accounts 2, 4, 7, and P–1, the "Separate Accounts") and Nationwide Variable Insurance Trust. The Insurance Companies and the Separate Accounts are referred to collectively as the "Applicants." The Applicants, together with Nationwide Variable Insurance Trust are referred to as the "Section 17(b) Applicants."

SUMMARY: *Summary of Application:* Applicants seek an order approving the proposed substitutions (the "Substitutions") of certain series of Nationwide Variable Insurance Trust (the "Trust" or "NVIT") for shares of series of other unaffiliated registered investment companies held by the Separate Accounts under certain variable annuity contracts and/or variable life insurance policies issued by the Insurance Companies (collectively, the "Contracts"). Section 17(b) Applicants also seek an order pursuant to Section 17(b) of the Act to permit certain in-kind transactions in connection with the Substitutions.

DATES: *Filing Date:* The application was filed on April 2, 2009, and amended and restated on July 15, 2010 and October 21, 2010.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on November 19, 2010, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: The Commission: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants: c/o Jamie Ruff Casto, Esq., Nationwide Life Insurance Company, One Nationwide Plaza, 1–34–201, Columbus, Ohio 43215.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Marquigny, Senior Counsel, or Joyce M. Pickholz, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 551–6795.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm*, or by calling (202) 551–8090.

Applicants' and Section 17(b) Applicants' Representations

1. NWL and NLAIC are stock life insurance companies organized under the laws of the State of Ohio. NLAIC is wholly owned by NWL which is wholly owned by Nationwide Financial Services, Inc. ("NFS"). NWL is the depositor and sponsor of Accounts II, 6, 7, 8, 9, 10, 14 and P–1 and VLI Accounts 2, 4, 7, and P–1. NLAIC is the depositor and sponsor of B, G, and P–A and VLI Account P–A.

2. All of the Separate Accounts are registered unit investment trusts used to issue one or more Contracts together with their respective Insurance Company. The file numbers for each Separate Account's registration under the Act and each Contract's registration under the Securities Act of 1933, as amended ("1933 Act") are set forth in the Application.

3. NVIT is registered under the Act as an open-end management investment company of the series type, and it securities are registered under the 1933 Act on Form N–1A (File Nos. 811–03213 and 002–73024). Two of these series, the NVIT—American Century NVIT Multi-Cap Value Fund and NVIT—Oppenheimer NVIT Large Cap Growth Fund (each an "NVIT Fund"), are the replacement funds ("New Funds" or "New Portfolios") in the proposed Substitutions.

4. Nationwide Fund Advisors ("NFA") currently serves as investment adviser to each of the NVIT Funds. NFA employs a subadvisory structure as part of its advisory strategy with respect to the NVIT Funds. Through an order from the Commission pursuant to Section 6(c) of the Act, NVIT is exempt from Section 15(a) of the Act and Rule 18f–2 thereunder with respect to subadvisory agreements (the "Manager of Managers Order").[1]

5. Applicants represent that the relief granted in the Manager of Managers Order extends to New Funds permitting NFA to enter into and materially amend investment subadvisory agreements without obtaining shareholder approval. Applicants indicate that the prospectuses for the New Funds disclose and explain the existence, substance and effect of the Manager of Managers Order. They also represent that if a new Subadviser is retained for a Fund, Contract owners ("Contractowners") would receive all information about the new Subadviser that would be included in a proxy statement, including any change in disclosure caused by the addition of a new Subadviser.

6. All of the Contracts involved in the Substitutions (i) permit transfers of contract value among the subaccounts pursuant to the limitations of the particular Contract, and (ii) are subject to market timing policies and procedures that may operate to limit transfers. Applicants represent that to the extent that the Contracts contain restrictions, limitations or transfer fees on a Contractowner's right to transfer, such restrictions, limitations, and transfer fees will not apply in connection with the proposed Substitutions.

7. Each Contract's prospectus contains provisions reserving Insurance Company Applicants' right to substitute shares of one Investment Option for shares of another Investment Option already purchased or to be purchased in the future if: (i) Shares of a current underlying mutual fund are no longer available for investment by the Separate Account; or (ii) in the judgment of Insurance Company Applicants' management, further investment in such Investment Option is inappropriate in view of the purposes of the Contract. Each Insurance Company Applicant's management has determined that further investment in the New Funds is no longer appropriate in view of the purposes of the Contracts.

8. Applicants represent that all of the portfolios involved in the Substitutions are currently available as underlying investment options in the Contracts.

9. Each Insurance Company, on its behalf and on behalf of the Separate Accounts proposes to make certain substitutions of various classes of shares of 6 funds currently available under the Contracts (the "Old Funds" or "Old Portfolios") for shares of the following classes of the corresponding NVIT New Funds:

No.	Old fund	Old class	NVIT New fund	New class
1	American Century Variable Portfolios, Inc.—American Century VP Value Fund ("Old Value Fund").	Class I	NVIT—American Century NVIT Multi Cap Value Fund ("New Multi Cap Value Fund").	Class I
2	Old Value Fund	Class II	New Multi Cap Value Fund	Class II
3	Fidelity Variable Insurance Products ("VIP") Fund—VIP Contrafund Portfolio ("Old Contrafund Portfolio").	Initial Class	NVIT—Oppenheimer NVIT Large Cap Growth Fund ("New Large Cap Growth Fund").	Class I
4	Old Contrafund Portfolio	Service Class	New Large Cap Growth Fund	Class I
5	Old Contrafund Portfolio	Service Class 2	New Large Cap Growth Fund	Class II
6	Fidelity VIP Fund—VIP Growth Opportunities Portfolio ("Old Growth Opps. Fund").	Initial Class	New Large Cap Growth Fund	Class I
7	Old Growth Opps. Fund	Service Class	New Large Cap Growth Fund	Class I
8	Old Growth Opps. Fund	Service Class 2	New Large Cap Growth Fund	Class II
9	Oppenheimer Variable Account Funds—Oppenheimer Capital Appreciation Fund/VA ("Old Cap Appreciation Fund").	Non-Service Shares	New Large Cap Growth Fund	Class I
10	Old Cap Appreciation Fund	Service Shares	New Large Cap Growth Fund	Class II
11	T. Rowe Price Equity Series, Inc.—T. Rowe Price Blue Chip Growth Portfolio ("Old Blue Chip Fund").	Class II	New Large Cap Growth Fund	Class I
12	Old Blue Chip Fund	Class II	New Large Cap Growth Fund	Class II
13	T. Rowe Price Equity Series, Inc.—T. Rowe Price Equity Income Portfolio ("Old Equity Income Fund").	Class II	New Multi Cap Value Fund	Class I
14	Old Equity Income Fund	Class II	New Multi Cap Value Fund	Class II

10. Applicants state that the proposed Substitutions are part of each Insurance Company's overall business plan to make the Contracts more attractive to purchasers and more efficient to administer and oversee.

11. Applicants assert their belief that the Substitutions will: (i) Consolidate investment options resulting in a less confusing menu of investment options for investors, greater efficiency in administration of the Contracts and the capacity to add other types of investment options; (ii) make the investment decision process more manageable for the investor through consistent disclosure format and terminology making it easier for Contractowners to analyze fund information and make informed investment decisions relating to allocation of his or her Contract value; (iii) enable the Insurance Companies to reduce certain costs that they incur in administering the Contracts by removing overlapping investment options; (iv) lower administrative costs for the Insurance Companies which could result in resources being reallocated to providing other contractowner services and support, and an overall more efficient and customer-friendly product offering. (v) enable the

[1] *In the Matter of Nationwide Investing Foundation, et al.,* 1940 Act Rel. No. 23133 (April 28, 1998) (Order), File No. 812–10764.

Trust's sub-advised strategy and augment the Insurance Companies' goal of efficiently offering a continuously competitive menu of investment options to its existing and prospective contractowners; (vi) provide investors with a more favorable and less confusing overall investment experience; and (vii) reduce the number and potential for variation of trading policies that contractowners must navigate and understand.

12. Applicants submit that each Substitution provides an alternate investment option that has the same or lower net operating expenses as the Old Fund. The applicable management fees, 12b-1 fees, other expenses, contractual waiver or reimbursement values and total operating expenses for each Old and New Fund are presented in detail in the Application and summarized below:

No.	New/Old fund	Class	Advisor fees (percent)	12b-1 Fees (percent)	Other expenses (percent)	Waiver/ reimburs't (percent)	Total expenses (percent)
1	Old Value Fund	Class I	0.97	N/A	0.00	0.00	0.97
	New Multi Cap Value Fund	Class I	0.57	N/A	3.10	2.75	0.92
2	Old Value Fund	Class II	0.87	0.25	0.00	0.00	1.12
	New Multi Cap Value Fund	Class II	0.57	0.25	3.10	2.83	1.09
3	Old Contrafund Portfolio	Initial	0.56	N/A	0.11	0.00	0.67
	New Large Cap Growth Fund	Class I	0.50	N/A	3.51	3.36	0.65
4	Old Contrafund Portfolio	Service	0.56	0.10	0.11	0.00	0.77
	New Large Cap Growth Fund	Class I	0.50	N/A	3.51	3.36	0.65
5	Old Contrafund Portfolio	Class 2	0.56	0.25	0.11	0.00	0.92
	New Large Cap Growth Fund	Class II	0.50	0.25	3.51	3.36	0.90
6	Old Growth Opps. Fund	Initial	0.56	N/A	0.16	0.00	0.72
	New: Large Cap Growth Fund	Class I	0.50	N/A	3.51	3.36	0.65
7	Old Growth Opps. Fund	Service	0.56	0.10	0.16	0.00	0.82
	New Large Cap Growth Fund	Class I	0.50	N/A	3.51	3.36	0.65
8	Old Growth Opps. Fund	Service 2	0.56	0.25	0.17	0.00	0.98
	New Large Cap Growth Fund	Class II	0.50	0.25	3.51	3.36	0.90
9	Old Cap Appreciation Fund	Non-Service	0.66	N/A	0.12	0.00	0.78
	New Large Cap Growth Fund	Class I	0.50	N/A	3.51	3.36	0.65
10	Old Cap Appreciation Fund	Service	0.66	0.25	0.13	0.00	1.04
	New Large Cap Growth Fund	Class II	0.50	0.25	3.51	3.36	0.90
11	Old Blue Chip Fund	Class II	0.85	0.25	0.00	0.00	1.10
	New Large Cap Growth Fund	Class I	0.50	N/A	3.51	3.36	0.65
12	Old Blue Chip Fund	Class II	0.85	0.25	0.00	0.00	1.10
	New Large Cap Growth Fund	Class II	0.50	0.25	3.51	3.36	0.90
13	Old Equity Income Fund	Class II	0.85	0.25	0.00	0.00	1.10
	New Multi Cap Value Fund	Class I	0.57	N/A	3.10	2.75	0.92
14	Old Equity Income Fund	Class II	0.85	0.25	0.00	0.00	1.10
	New Multi Cap Value Fund	Class II	0.57	0.25	3.10	2.83	1.09

The following summarizes the more complete comparison of New and Old Funds provided in the Application.

13. *Substitutions #1 & #2: Old Value Fund Verses New Multi Cap Value Fund.* Applicants represent that both Old Value Fund and New Multi Cap Value Fund have similar investment objectives and substantially similar policies and risks. Specifically, Applicants state that both "seek long-term capital growth or appreciation, and secondarily income * * * [and] seek to meet their objectives by investing in equity securities, using a value investment strategy that looks for companies that are undervalued or are temporarily out of favor in the market." Both funds allow for the use of derivatives securities, preferred stock, convertible and foreign securities without limitation. Applicants acknowledge that differences in the funds' risks and investment objectives and strategies exist, but assert the belief that these differences are immaterial and do not introduce Contractowners to materially greater risks than before the Substitution.

14. *Substitutions #3–#5: Old Contrafund Portfolio Verses New Large Cap Growth Fund.* Applicants represent that both the Old Contrafund Portfolio and the New Large Cap Growth Fund "have similar investment objectives and substantially similar policies and risks. Both funds seek long-term capital growth or appreciation, and both invest at least 80% of their respective net assets in common stocks. Both funds diversify among a variety of industries and sectors." Applicants acknowledge that differences in the funds' risks and investment objectives and strategies exist, but assert the belief that these differences are immaterial and do not introduce Contractowners to materially greater risks than before the Substitution.

15. *Substitutions #6–#8: Old Growth Opps. Fund Verses New Large Cap Growth Fund.* Applicants represent that both Old Growth Opps. Fund and New Large Cap Growth Fund have similar investment objectives and substantially similar policies and risks. Both funds seek capital growth, investing primarily in common stocks. Both funds employ a growth style of investing, seeking companies with above-average growth potential or whose earnings are expected to grow consistently faster than those of other companies. Applicants also note that New Large Cap Growth Fund has a diversification policy affirmatively seeking to limit risk which Old Growth Opps. Fund does not share. Applicants assert that both funds have similar investment objectives and substantially similar policies and risks. Applicants state that while the funds' investment objectives are not identical, any distinction between them is immaterial, since both funds are intended for long-term investment and represent that any differences in their investment objectives do not introduce Contract Owners to greater risks than before the Substitution.

16. *Substitutions #9 & #10: Old Cap Appreciation Fund Verses New Large Cap Growth Fund.* Applicants represent that Old Cap Appreciation Fund and

New Large Cap Growth Fund have similar investment objectives and substantially similar policies and risks, seek capital growth or appreciation by investing in common stocks using a growth style investment strategy, diversify broadly among companies and industries, and invest in a similar percentage of foreign securities. Applicants state that both funds look for companies in businesses that have above-average growth potential, growth rates the portfolio manager believes are sustainable over time, and stocks with reasonable valuations relative to their growth potential. Applicants represent that immaterial differences in risks, investment objectives and strategies exist but do not expose Contractowners to materially greater risks post-Substitution.

17. *Substitutions #11 & #12: Old Blue Chip Fund Verses New Large Cap Growth Fund.* Applicants believe Old Blue Chip Fund and New Large Cap Growth Fund have similar investment objectives and substantially similar policies and risks. Both funds seek long-term capital growth and invest at least 80% of their net assets in stocks of established companies using a growth style of investing. Applicants believe that the differences in risks, investment objectives and strategies are immaterial, and the risks to Contractowners will not be materially greater after the Substitutions.

18. *Substitutions #13 & #14: Old Equity Income Fund Verses New Multi Cap Value Fund.* Applicants state their belief that Old Equity Income Fund and New Multi Cap Value Fund have similar investment objectives and substantially similar policies and risks. Both funds seek capital appreciation and dividend income, although seeking current income is a secondary objective of New Multi Cap Value Fund. Applicants represent that both funds invest at least 80% of their respective net assets in common stocks of companies of any size, employing a value style of investing, and allow foreign securities, preferred stocks, convertible securities and derivatives to be used as principal strategies. Applicants assert that immaterial differences in risks and investment objectives and strategies exist, but believe these differences do not introduce Contractowners to materially greater risks after the Substitutions.

19. *Substitution Procedure: In-Kind Transactions.* Applicants assert that as of the effective date of the Substitutions ("Substitution Date"), a portion of the securities of the Old Funds will be redeemed in-kind and those securities received will be used to purchase shares of the New Funds. Applicants assert that redemption requests and purchase orders will be placed simultaneously so that contract values will remain fully invested at all times. They further represent that all redemptions of shares of the Old Portfolios and purchases of shares of the New Portfolios will be effected will take place at relative net asset value determined on the Substitution Date in accordance with Section 22(c) of the Act and Rule 22c–1 thereunder with no change in the amount of any Contractowner's Contract value, cash value, death benefit, or dollar value of his or her investment in the Separate Accounts.

20. Likewise, Section 17(b) Applicants represent that: (i) The New Fund shares sold in-kind will be of the type and quality that a New Fund could have acquired with the proceeds from the sale of its shares had the shares been sold for cash; and (ii) NFA and the relevant subadviser(s) will analyze the portfolio securities being offered to each relevant New Fund and will retain only those securities that it would have acquired for each such fund in a cash transaction.

Whether NFA or relevant Subadviser of a New Fund accepts or declines to accept a particular portfolio security in-kind, Applicants represent that each Substitution will be effected by redeeming shares of the Existing Fund in cash and/or in-kind on the Substitution Date and using the proceeds of those redemptions to purchase shares of the New Fund at their net asset value on the same date.

21. *Substitution Costs and Fund Expenses.* Applicants state that the Insurance Companies have agreed to bear all expenses incurred in connection with the Substitutions and related filings and notices, including legal, accounting, brokerage, and other fees and expenses. In addition, Applicants assert that Contractowners will have the same or lower net operating expenses after the Substitutions as prior to the Substitutions.

22. With respect to those who are Contractowners on the Substitution Date, Applicants specifically represent the following: On the last business day of each fiscal period (not to exceed a fiscal quarter) during the twenty-four (24) months following the Substitution Date, the Insurance Companies will reimburse those Contractowners with Contract value allocated to a subaccount corresponding to an New Fund to the extent that, for that period, the New Fund's net operating expenses (taking into account fee waivers and expense reimbursements) and subaccount expenses (asset based fees and charges deducted on a daily basis from sub-account assets and reflected in the calculation of sub-account unit values) exceed, on an annualized basis, the sum of the Old Fund's net operating expenses (taking into account fee waivers and expense reimbursements) and subaccount expenses (asset based fees and charges deducted on a daily basis from sub-account assets and reflected in the calculation of sub-account unit values) for fiscal year 2009.

23. *Contract Charges and Benefits.* Applicants represent that the Insurance Companies will not increase the Contract fees and charges that would otherwise be assessed under the terms of the Contracts for a period of at least two (2) years following the Substitution Date. To the extent the Contracts contain restrictions, limitations or fees for transfers, Applicants represent such provisions will not apply in connection with the proposed Substitutions, and each Substitution redemption and purchase will not be treated as a transfer for purposes of assessing transfer charges or computing the number of permissible transfers under the Contracts. Applicants state that Contractowners will not incur any fees or charges as a result of the proposed Substitutions, nor will their rights or insurance benefits or the Insurance Companies' obligations under the Contracts be altered in any way. Applicants also affirm that the Substitutions will not result in adverse tax consequences to Contractowners and will not alter any tax benefits associated with the Contracts.

24. *Manager of Managers Order.* Applicants further represent that, after the Substitution Date, the New Funds will not change a Subadviser, add a new Subadviser, or otherwise rely on the Manager of Managers Order without first obtaining shareholder approval of the change in Subadviser, the new Subadviser, or the Fund's ability add or to replace a subadviser in reliance on Manager of Managers Order. In addition, before the Substitutions, Applicants state that each Contractowner will have been provided with a New Portfolio prospectus describing the existence, substance and effect of the Manager of Managers Order.

25. *Notice Procedures.* Applicants represent that prospectus supplements for the Contracts will be delivered to Contractowners at least thirty (30) days before the Substitution Date. Applicants state that the supplement ("Pre-Substitution Notice") will: (i) Notify all Contractowners of the Insurance Company's intent to implement the Substitutions, that this Amended Application has been filed to obtain the

necessary orders to do so, and indicate the anticipated Substitution Date; (ii) advise Contractowners that from the date of the supplement until the Substitution Date, Contractowners are permitted to transfer Contract value out of any Old Fund sub-account to any other sub-account(s) offered under the Contract without the transfer being treated as a transfer for purposes of transfer limitations and fees otherwise applicable under the terms of the Contract; (iii) instruct Contractowners how to submit transfer requests in light of the proposed Substitutions; (iv) advise Contractowners that any Contract value remaining in an Old Fund sub-account on the Substitution Date will be transferred to the corresponding New Fund sub-account, and that the Substitutions will take place at relative net asset value without charge (including sales charges or surrender charges) and without counting toward the number of transfers that may be permitted without charge; (v) inform Contractowners that for at least thirty (30) days following the Substitution Date, the Insurance Companies will permit Contractowners to make transfers of Contract value out of each New Fund sub-account to any other sub-account(s) offered under the Contract without the transfer being treated as a transfer for purposes of transfer limitations and fees that would otherwise apply under the terms of the Contract; and (vi) inform Contractowners that, except as described in the market timing provision of the relevant prospectus, the respective Insurance Company will not exercise any rights reserved by it under the Contracts to impose additional restrictions on transfers out of a New Fund for at least thirty (30) days after the Substitution Date.

26. Applicants also represent that: (i) Prior to the Substitutions; all existing Contractowners will have received the appropriate prospectus supplements containing this disclosure and the most recent prospectus and/or supplement for the New Portfolios (ii) new purchasers will be provided the prospectus supplement, contract prospectus, and the prospectus and/or supplement for the New Funds in accordance with all applicable legal requirements; and (iii) prospective Contract purchasers will be provided the prospectus supplement and the Contract prospectus. Applicants also represent that, within five (5) business days after the Substitution Date, Contractowners will be sent a written confirmation of the Substitutions which will restate the information set forth in the Pre-Substitution Notice.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order pursuant to Section 26(c) of the Act approving the Substitutions.

2. Section 26(c) of the Act makes it unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission approves the substitution. The Commission shall approve such a substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicants state that the right to make such a substitution has been reserved under the Contracts and is disclosed in the prospectus for the related Contracts. Applicants declare that, in all material respects, each New Fund and its corresponding Old Fund have similar, substantially similar, or identical investment objectives and strategies, and that each proposed Substitutions retains for Contractowners the investment flexibility and expertise in asset management features of the Contracts. They assert that after the Substitution Date, Contractowners invested in a New Fund will have the same or lower net operating expense ratio(s) as before the Substitution. Further, Applicants have agreed to certain expense limits to ensure affected Contractowners do not incur higher expenses as a result of a Substitution for a period of twenty four (24) months after the Substitution.

4. Applicants submit that the proposed Substitutions meet the standards set forth in Section 26(c) and assert that replacement of the Old Portfolios with the New Portfolios is consistent with the protection of Contractowners and the purposes fairly intended by the policy and provisions of the Act. Specifically, they argue that the Substitutions will not result in the type of costly forced redemption that Section 26(c) was designed to prevent. Rather, Applicants conclude that "[a]ny impact on the investment programs of affected Contractowners should be negligible," and affirm the Substitutions will have no impact on other aspects of the Contracts including the annuity, life, or tax benefits they afford affected Contractowners.

5. Section 17(b) Applicants request that the Commission issue an order pursuant to Section 17(b) of the 1940 Act exempting them from the provisions of Section 17(a) of the 1940 Act to the extent necessary to permit them to carry out the in-kind Substitution transactions ("In-Kind Transactions").

6. Section 17(a)(1) of the Act, in relevant part, prohibits any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, from knowingly selling any security or other property to that company. Section 17(a)(2) of the Act generally prohibits the persons described above, acting as principal, from knowingly purchasing any security or other property from the registered company. Pursuant to Section 17(a)(1) of the Act, the Section 17(b) Applicants may be considered affiliates of one or more of the portfolios involved in the Substitutions. Because the Substitutions may be effected, in whole or in part, by means of in-kind redemptions and subsequent purchases of shares and by means of In-Kind Transactions, the Substitutions may be deemed to involve one or more purchases or sales of securities or property between affiliates.

7. Section 17(b) of the Act provides that the Commission may, upon application, grant an order exempting any transaction from the prohibitions of Section 17(a) if the evidence establishes that: the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and records filed under the Act; and the proposed transaction is consistent with the general purposes of the Act.

8. Based on the facts presented above, Section 17(b) Applicants submit that the terms of the In-Kind Transactions, including the consideration to be paid and received, are reasonable, fair, and do not involve overreaching because: (i) The Contractowners' Contract values will not be adversely impacted or diluted; and (ii) Section 17(b) Applicants agree to carry out the In-Kind Transactions in conformity with all of the conditions of Rule 17a–7 and the procedures adopted thereunder, except that the consideration paid for the securities being purchased or sold may not be entirely cash. Thus, Section 17(b) Applicants conclude that the purposes intended by implementation of the rule are met by the terms of the In-Kind Transactions.

9. In support of this position Section 17(b) Applicants assert that the proposed In-Kind Transactions will be effected based upon the independent current market price of the portfolio

securities as specified in Rule 17a–7(b) and will include only securities for which market quotations are readily available on the Substitution Date. In accordance with Rule 17a–7(c), Section 17(b) Applicants assert that the proposed In-Kind Transactions will be consistent with the policy of each registered investment company and separate series thereof participating in the In-Kind Transactions, as recited in the relevant registered investment company's registration statement and reports. As specified in Rule 17a–7(d), the Application states that no brokerage commission, fee (except for any customary transfer fees), or other remuneration will be paid in connection with the proposed In-Kind Transactions. Likewise, Section 17(b) Applicants represent that Trust's Board of Trustees has adopted and implemented the fund governance and oversight procedures as required by Rule 17a–7(e) and (f). The Application also states, "pursuant to Rule 17a–7(e)(3), during the calendar quarter following the quarter in which any In-Kind Transactions occur, the Trust's Board of Trustees will review reports submitted by NFA in respect of such In-Kind Transactions in order to determine that all such In-Kind Transactions made during the preceding quarter were effected in accordance with the representations stated herein." Finally, Applicants represent that a written record of the procedures for the proposed In-Kind Transactions will be maintained and preserved in accordance with Rule 17a–7(g).

Conclusions

Section 26 Applicants submit that for the reasons summarized above the proposed Substitutions meet the standards of Section 26(c) of the 1940 Act and request that the Commission issue an order of approval pursuant to Section 26(c) of the 1940 Act. Section 17 Applicants submit that the proposed In-Kind Transactions meet the standards of Section 17(b) of the 1940 Act and request that the Commission issue an order of exemption pursuant to Section 17(b) of the 1940 Act.

For the Commission, by the Division of Investment Management pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–27367 Filed 10–28–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold an Open Meeting on November 3, 2010 at 10 a.m., in the Auditorium, Room L–002.

The subject matter of the Open Meeting will be:

1. The Commission will consider whether to adopt new Rule 15c3–5, Risk Management Controls for Brokers or Dealers with Market Access, under the Securities Exchange Act of 1934. The new rule would require brokers or dealers with access to trading directly on an exchange or alternative trading system ("ATS"), including those providing sponsored or direct market access to customers or other persons, to implement risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of this business activity. Among other things, new Rule 15c3–5 would effectively prohibit broker-dealers from providing "unfiltered" or "naked" sponsored access to any exchange or ATS.

2. The Commission will consider whether to propose a new rule under Section 763(g) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, to prohibit fraud, manipulation, and deception in connection with security-based swaps.

3. The Commission will consider whether to propose rules and forms to implement Section 21F of the Securities Exchange Act of 1934 ("Exchange Act") entitled "Securities Whistleblower Incentives and Protection." Section 21F, as added by Section 922 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, provides that the Commission shall pay awards, under regulations prescribed by the Commission and subject to certain limitations, to eligible whistleblowers who voluntarily provide the Commission with original information about a violation of the Federal securities laws that leads to the successful enforcement of a covered judicial or administrative action, or a related action.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: October 27, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–27493 Filed 10–27–10; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63151; File No. SR–NASDAQ–2010–132]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by The NASDAQ Stock Market LLC To Clarify the Implementation Date of the NASDAQ Options Market Professional Filing

October 21, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1], and Rule 19b–4 thereunder,[2] notice is hereby given that on October 14, 2010, The NASDAQ Stock Market LLC ("NASDAQ") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by NASDAQ. 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

NASDAQ is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposal that clarifies when the NASDAQ Options Market ("NOM" or "Exchange") intends to implement a recent filing that adopted a definition of "Professional" on the Exchange and required that all Professional orders be appropriately marked (the "NOM Professional filing").

The text of the proposed rule change is available from NASDAQ's Web site at *http://nasdaq.cchwallstreet.com/Filings/*, at NASDAQ's principal office, 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, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed

[1] 15 U.S.C. 78s(b)(1)

[2] 17 CFR 240.19b–4.

any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to clarify when the Exchange intends to implement the recent NOM Professional filing that amended Chapter I, Section 1 (Definitions) to adopt a definition of "Professional" on the Exchange and require that all Professional orders be appropriately marked by Exchange Participants or members.

In the NOM Professional filing, the Exchange indicated that it intended to notify its Participants (members) via an Options Trading Alert ("OTA") or Options Regulatory Alert ("ORA") that the proposal would be implemented on the first trading day of the month after approval of the proposal, which would be November 1, 2010.[3] The Exchange has heard from Participants that would be responsible for appropriately marking Professional orders that the November 1 implementation date is too short in light of internal technological requirements. As a result, the Exchange is proposing to clarify that it intends to implement the NOM Professional filing on the first trading day of December 2010, and will so notify its Participants via an OTA or ORA.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Section 6(b)(5) of the Act,[5] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change proposes to clarify for Participants the implementation date of a recently-approved Professional designation filing.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(3) thereunder,[7] Nasdaq has designated this proposal as one that is concerned solely with the administration of the self-regulatory organization. Accordingly, Nasdaq believes that its proposal should become immediately effective.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2010–132 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2010–132. This file number should be included on the subject line if e-mail 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 a.m. and 3 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–NASDAQ–2010–132 and should be submitted on or before November 19, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–27336 Filed 10–28–10; 8:45 am]

BILLING CODE 8011–01–P

[3] *See* Securities Exchange Act Release No. 62724 (August 16, 2010), 75 FR 51509 (August 20, 2010) (SR–NASDAQ–2010–099) (notice of filing). *See also* Securities Exchange Act Release Nos. 63028 (October 1, 2010), 75 FR 62443 (October 8, 2010) (SR–NASDAQ–2010–099) (approval order).

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(3).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63175; File No. SR–C2–2010–006]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the C2 Fees Schedule

October 25, 2010.

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 October 22, 2010, C2 Options Exchange, Incorporated (the "Exchange" or "C2") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. *Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change*

C2 proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

C2 proposes to amend its Fees Schedule in preparation for the Exchange's expected launch on October 29, 2010. In connection with the commencement of trading, C2 proposes to add a number of fees relating to activities on the Exchange. Most of the proposed fees are identical to fees in place at the Chicago Board Options Exchange, Incorporated ("CBOE").

Regarding transactions, C2 proposes to impose per contract taker fees and maker rebates. The amounts of the fees/rebates are based on order origin code. More specifically, the fee for taking liquidity will be $0.25 per contract for C2 Market-Makers, $0.15 for public customer orders, and $0.40 for all other users (including Professional Customers). The maker rebate will be $0.15 per contract for C2 Market-Makers, $0.00 for public customers, and $0.10 for all other users. The Exchange believes that it is appropriate and not unfairly discriminatory to set a higher rebate level for C2 Market-Makers than other participants in light of the commitments C2 Market-Makers undertake for market quality and liquidity. Further, C2 notes that while public customers do not receive a maker rebate, they are assessed a significantly lower taker charge than other user types.[3] These fees will apply to all multiply-listed, non-proprietary, penny pilot equity and ETF options classes. Separate fees may be established, pursuant to a rule filing with the Commission, for other classes eventually traded on C2. Initially, there will be no fees or rebates for any users for trades that occur as part of the opening process.

The Exchange also proposes to impose a Linkage Routing Fee of $0.50 per routed contract in addition to the applicable taker fee rate. The $0.50 portion of the Routing Fee offsets costs incurred by the Exchange in connection with using an unaffiliated broker-dealer to access other exchanges and with transaction charges assessed by other exchanges. The applicable C2 taker fee rate component of the Routing Fee accounts for the C2 "execution" that occurs as part of the linkage process whereby an away execution obtained by C2's routing broker is put to the underlying C2 customer on C2 (we note that there is no second print in connection with this process). C2 further notes that users can route directly to exchanges posting the best market if desired (or to specify that C2 not route orders away on their behalf) and that this routing function is an "extra" service provided by C2 to its Permit Holders.[4]

C2 proposes to impose access fees for the two types of access permits initially available for use on C2. The proposed permit fees would only be applicable for access to non-proprietary classes (if proprietary classes are added at a later date, access fees for such classes would be filed with the Commission). C2 will not assess these fees for the month of October 2010. The cost will be $5,000 per month for a Market-Maker Permit. This permit gives the holder the ability to stream quotes and submit orders into the C2 trade engine. This permit also provides an appointment credit of 1.0, a quoting and order entry bandwidth allowance, up to three logins and Trading Permit Holder status. The quoting bandwidth allowance for a Market-Maker Permit is equivalent to a maximum of 156,000,000 quotes over the course of a trading day. The Electronic Access Permit, with a cost of $1,000 per month, gives the holder the ability to submit agency and qualifying proprietary orders into the C2 trade engine (but not stream quotes) as well as an order entry bandwidth allowance, up to three logins and Trading Permit Holder status. The higher cost of the Market-Maker Permit is equitable in that it reflects the ability to continuously stream quotations.

C2 will offer two kinds of bandwidth packets for use to supplement the standard bandwidth allocation contained in each access permit. The Quoting and Order Entry Bandwidth Packet (available to Market-Makers) provides bandwidth equivalent to 1/5th of a C2 Market-Maker Permit. The Order Entry Bandwidth Packet (available to Electronic Access Permit holders) provides bandwidth equivalent to one C2 Electronic Access Permit. C2 proposes a fee of $1,000 per month for each supplemental bandwidth packet.

The Exchange also proposes to impose Sponsored User fees. The one-time Registration Fee of $2,500 will be payable by a Trading Permit Holder for the registration of each of its Sponsored users. This fee is identical to the CBOE sponsored user fee, and offsets the cost of processing and registering Sponsored User applications. A Sponsored User is a person or entity that has entered into a sponsorship arrangement for purposes of receiving access to the Exchange system. The Sponsored User Program is governed by C2 Rule 3.15.

The Exchange proposes to assess the Sales Value Fee to each Trading Permit

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange also notes that a $0.00 rebate for public customers is not unprecedented (*See* International Securities Exchange, Inc. Fee schedule).

[4] C2 notes that CBOE also adds its "applicable transaction fee amount" to its routing fee (*See* CBOE Fees Schedule).

Holder for sales of securities on C2 with respect to which C2 is obligated to pay a fee to the SEC under Section 31 of the Exchange Act. To the extent there may be any excess monies collected for the Sales Value Fee, C2 may retain those monies to help fund its general operating expenses. The Sales Value Fee is collected indirectly from Trading Permit Holders through their clearing firms by OCC on behalf of C2 with respect to options sales and options exercises. The amount of the Sales Value Fee for options sales and options exercises is equal to (i) the Section 31 fee rate multiplied by (ii) the Trading Permit Holder's aggregate dollar amount of covered sales resulting from options transactions occurring on the Exchange during any computational period. This fee is identical to the Sales Value Fee in place at CBOE.

The Exchange proposes to impose a number of regulatory fees. The Firm Designated Examining Authority Fee of $0.40 per $1,000 of gross revenue (as reported on the quarterly FOCUS Report, Form X–17A–5) excludes commodity commission revenue. This fee is also subject to a monthly minimum fee of $1,000 for clearing firms and $275 for non-clearing firms. This fee is identical to a related fee on CBOE.

The Exchange proposes a number of fees to be collected and retained by FINRA via the Web CRD SM registration system for the registration of associated persons of Exchange Trading Permit Holders that are not also FINRA members. The FINRA Non-Member Processing Fee ($85.00) is for all Initial, Transfer, Relicense, and Dual Registration Form U–4 filings. This fee will also be generated upon refiling to Web CRD SM of C2-only registered individuals. The FINRA Disclosure Processing Fee (U–4, U–5, and amendments) ($95.00) is for all registration, transfer, or termination filings with new or amended disclosure information or that require certification as well as any amendment to disclosure information. The FINRA Annual System Processing Fee ($30.00) will be assessed only during renewals. There will also be fingerprint processing fees of $30.25 per card (initial submission), $13.00 per card (second submission), $30.25 per card (third submission) and $13.00 per card submitted by Trading Permit Holders on behalf of their associated person who have had their prints processed through a SRO other than FINRA. These fees are identical to fees in place at CBOE.

The Exchange proposes to assess a number of Communication Review Fees. For printed material reviewed, the proposed fee would be $150 per submission for regular review and $1,000 for expedited review, with a $25 per page surcharge for each page reviewed in excess of five pages ($50 per page for expedited review). For video and audio media reviewed, the proposed fee would be $150 per submission for regular review and $1,000 for expedited review, with a $25 per minute surcharge for each minute of tape reviewed in excess of five minutes ($50 per minute for expedited review). Expedited review will be completed within five business days, not including the date the item is received by the Exchange, unless a shorter or longer period is agreed to by the Exchange. The Exchange may, in its sole discretion, refuse requests for expedited review. These fees are identical to fees in place at CBOE.

C2 proposes a Continuing Education Fee of $100 per session assessed as to each individual who is required to complete the Regulatory Element of the Continuing Education Requirements pursuant to Rule 9.3A. For Ad Hoc Information Services Requests, the Exchange will assess a fee equal to the costs of production of such information.

The Exchange also proposes Connectivity Fees of $40.00 per month for each of a network access port charge, a CMI Client application server, and a FIX port, with the charge going up to $80.00 per month for Sponsored Users. The Exchange believes it is equitable and reasonable to charge higher connectivity fees to Sponsored Users than it charges to Permit Holders because Permit Holders are subject to dues and other fees through their membership to help offset the Exchange's systems expenses.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(4)[6] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among C2 Trading Permit Holders and other persons using Exchange facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

C2 does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A)(ii)[7] of the Act and subparagraph (f)(2) of Rule 19b–4[8] thereunder. 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 e-mail to *rule-comments@sec.gov.* Please include File Number SR–C2–2010–006 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–C2–2010–006. This file number should be included on the subject line if e-mail 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

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2010–006 and should be submitted on or before November 19, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–27360 Filed 10–28–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63176; File No. SR–NYSEArca–2010–94]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Listing of the iShares® Taxable Municipal Bond Fund

October 25, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on October 21, 2010, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02, the following series of the iShares® Trust: iShares® Taxable Municipal Bond Fund. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and the Exchange's Web site at *http://www.nyse.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares ("Shares") of the following series of the iShares® Trust ("Trust") under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02, which governs the listing and trading of Investment Company Units ("ICUs"): iShares® Taxable Municipal Bond Fund ("Fund").[3]

The Trust is registered with the Commission as an investment company under the Investment Company Act of 1940 ("1940 Act") (15 U.S.C. 80a).[4] Blackrock Fund Advisors serves as the investment adviser ("Adviser") to the Fund.

Description of the Shares and the Fund

According to the Registration Statement, the Fund seeks investment results that correspond generally to the price and yield performance, before fees and expenses, of The BofA Merrill Lynch Broad U.S. Taxable Municipal Securities Index (the "Underlying Index").

The Underlying Index measures the performance of investment-grade taxable debt securities of the U.S. municipal bond market. As of October 1, 2010, there were 1,779 issues in the Underlying Index.

The Underlying Index includes fixed-rate municipal bonds issued publicly in the U.S. market by U.S. States and territories and their political subdivisions. The interest payments on the bonds in the Underlying Index are generally subject to U.S. Federal income taxes. Each bond must have an investment grade rating based on the average rating by Moody's Investors Service, Inc. ("Moody's"), Standard & Poor's Financial Services LLC (a subsidiary of The McGraw-Hill Companies, Inc.) ("S&P"), and Fitch, Inc. ("Fitch"). Each bond must be denominated in U.S. dollars.

The Exchange is submitting this proposed rule change because the Underlying Index for the Fund does not meet all of the "generic" listing requirements of Commentary .02(a) to NYSE Arca Equities Rule 5.2(j)(3) applicable to listing of ICUs based on fixed income indexes. The Underlying Index meets all such requirements except for those set forth in Commentary .02(a)(2).[5] Specifically, as of October 1, 2010, 70.85% of the weight of the Underlying Index

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission has previously approved listing and trading of ICUs based on certain fixed income indexes. *See, e.g.,* Securities Exchange Act Release No. 48662 (October 20, 2003), 68 FR 61535 (October 28, 2003) (SR–PCX–2003–41) (approving listing and trading pursuant to unlisted trading privileges ("UTP") of fixed income funds and the UTP trading of certain iShares® fixed income funds). In addition, the Commission has approved NYSE Arca generic listing rules for Investment Company Units based on a fixed income index in Securities Exchange Act Release No. 55783 (May 17, 2007), 72 FR 29194 (May 24, 2007) (SR–NYSEArca–2007–36). The Commission has approved pursuant to Section 19(b)(2) of the Exchange Act the listing on the American Stock Exchange of exchange traded funds based on fixed income indexes. *See, e.g.,* Securities Exchange Act Release No. 48534 (September 24, 2003), 68 FR 56353 (September 30, 2003) (SR–Amex–2003–75) (order approving listing on Amex of eight series of iShares Lehman Bond Funds). In addition, the Commission recently has approved for listing on NYSE Arca under NYSE Arca Equities Rule 8.600 ("Managed Fund Shares") two actively managed ETFs of the PIMCO ETF Trust that hold municipal bonds. *See* Securities Exchange Act Release No. 60981 (August 27 [sic], 2009) (SR–NYSEArca–2009–79) (order approving [sic] PIMCO Short-Term Municipal Bond Strategy Fund and PIMCO Intermediate Municipal Bond Strategy Fund, among others).

[4] *See* Registration Statement on Form N–1A for the Trust filed with the Securities and Exchange Commission on September 30, 2010 (File Nos. 333–92935 and 811–09729) (the "Registration Statement"). The descriptions of the Fund and the Shares contained herein are based on information in the Registration Statement.

[5] Commentary .02(a)(2) to NYSE Arca Equities Rule 5.2(j)(3) provides components of an index or portfolio underlying a series of ICUs that in the aggregate account for at least 75% of the weight of the index or portfolio each must have a minimum original principal amount outstanding of $100 million or more.

components have a minimum original principal amount outstanding of $100 million or more.

The Exchange represents that: (1) Except for Commentary .02(a)(2) to NYSE Arca Equities Rule 5.2(j)(3), the Shares of the Fund currently satisfy all of the generic listing standards under NYSE Arca Equities Rule 5.2(j)(3); (2) the continued listing standards under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) applicable to ICUs shall apply to the Shares; and (3) the Trust is required to comply with Rule 10A–3 under the Exchange Act[6] for the initial and continued listing of the Shares. In addition, the Exchange represents that the Shares will comply with all other requirements applicable to ICUs including, but not limited to, requirements relating to the dissemination of key information such as the value of the Underlying Index and Intraday Indicative Value, rules governing the trading of equity securities, trading hours, trading halts, surveillance, information barriers and Information Bulletin to ETP Holders, as set forth in Exchange rules applicable to ICUs and prior Commission orders approving the generic listing rules applicable to the listing and trading of ICUs.[7]

Detailed descriptions of the Fund, the Underlying Index, procedures for creating and redeeming Shares, transaction fees and expenses, dividends, distributions, taxes, risks, and reports to be distributed to beneficial owners of the Shares can be found in the Registration Statement or on the Web site for the Fund (*http://www.ishares.com*), as applicable.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)[8] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change will facilitate the listing and trading of additional types of exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. In addition, the listing and trading criteria set forth in NYSE Arca Equities Rule 5.2(j)(3) and Commentary .02 thereto and continued listing criteria in NYSE Arca Equities Rule 5.5(g)(2) are intended to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

The Exchange has requested that the Commission waive the 30-day operative delay. The Exchange states that the proposed rule change does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition. In addition, the Exchange believes that it has developed adequate trading rules, procedures, surveillance programs, and listing standards for the continued listing and trading of the Shares.

The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest. The Commission notes that the Underlying Index for the Fund fails to meet the requirements set forth in Commentary .02(a)(2) to NYSE Arca Equities Rule 5.2(j)(3) by only a small amount (4.15%) and that the Exchange represents that the Shares of the Fund currently satisfy all of the other generic listing standards under NYSE Arca Equities Rule 5.2(j)(3) and all other requirements applicable to ICUs, as set forth in Exchange rules and prior Commission orders approving the generic listing rules applicable to the listing and trading of ICUs. The Commission also notes that there are approximately 1,779 issues in the Underlying Index as of October 1, 2010. The Commission believes that the listing and trading of the Shares do not present any novel or significant issues or impose any significant burden on competition, and that waiving the 30-day operative delay would benefit the market and investors by providing market participants with additional investing choices. For these reasons, the Commission designates the proposal operative upon filing.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is 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 e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2010–94 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca-2010–94. This file number should be included on the

[6] 17 CFR 240.10A–3.

[7] *See, e.g.,* Securities Exchange Act Release No. 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR–PCX–2001–14) (order approving generic listing standards for ICUs and Portfolio Depositary Receipts); Securities Exchange Act Release No. 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999) (SR–PCX–98–29) (order approving rules for listing and trading of ICUs).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) 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.

[11] 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).

subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2010–94 and should be submitted on or before November 19, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–27368 Filed 10–28–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63160; File No. SR–CBOE–2010–093]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify the Fee Schedule for the CBOE Stock Exchange

October 22, 2010.

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 October 15, 2010, the Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend the Fee Schedule of the CBOE Stock Exchange ("CBSX") to modify certain transaction fees. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 23, 2010, the Commission published an immediately effective rule filing to modify the transaction fees for 24 securities traded on CBSX (the following symbols: BAC, C, DXD, EMC, EWJ, F, FAX, FAZ, GE, INTC, MOT, MSFT, MU, NOK, Q, QID, S, SIRI, SKF, T, TWM, UNG, UWM, XLF).[3] On September 9, 2010, the Commission published an immediately effective rule filing to modify the transaction fees for 51 more securities traded on CBSX (the following symbols: AA, AMAT, AMD, BGZ, BP, BSX, CMCSA, COCO, CSCO, CX, DELL, DUK, EBAY, EEM, EWT, FAS, FLEX, HBAN, IYR, MDT, MGM, IYR, MDT, MGM, NLY, NVDA, NWSA, ORCL, PFE, QCOM, QQQQ, SBUX, SH, SLV, SMH, SSO, SYMC, TBT, TSM, TXN, UCO, USO, VALE, VWO, WFC, XHB, XLB, XLK, XLP, XLU, XLV, XLY, XRX, YHOO).[4] On September 28, 2010, the Commission published an immediately effective rule filing to modify the transaction fees for 51 more securities traded on CBSX (the following symbols: ARNA, ATML, BKC, BRCD, CIM, DOW, DRYS, EFA, EWZ, FITB, FXI, GBG, GDX, GLD, GLW, HPQ, IDIX, IWM, JPM, KEY, LVLT, LVS, MFE, MO, MRVL, ONNN, PBR, PCBC, QLD, RF, RFMD, RIMM, RRI, RSCR, SDS, SNDK, SPLS, SPY, TEVA, TLT, TNA, TZA, UYG, VXX, VZ, X, XLE, XLI, XOM, XRT).[5]

CBSX now proposes to modify its transaction fees so that all securities are subject to the Maker and Taker fees and rebates to which the aforementioned securities became subject. The Taker rebate shall be $0.0014 per share for transactions in all securities traded on CBSX that are priced $1 or greater. The Maker fee shall be $0.0018 per share for transactions in all securities traded on CBSX that are priced $1 or greater.

Additionally, CBSX proposes to modify the Maker and Taker fees and rebates for transactions in securities priced less than $1. The Taker fee for such transactions shall be 0.05% of the dollar value of the transaction. The Maker rebate for such transaction shall be 0.01% of the dollar value of the transaction.

Consistent with the new fees set forth above, CBSX also proposes to amend the fee and rebate for NBBO Step-Up Trades. For stocks priced $1 and over, the order that is flashed will receive a $0.0014 per share rebate and the responder will be charged $0.0018 per share. For stocks priced under $1, the maker/taker fees will correspond to those in place for non-flashed executions (*i.e.,* the Taker fee for such transactions shall be 0.05% of the dollar value of the transaction, and the Maker rebate for such transaction shall be 0.01% of the dollar value of the transaction).

The fee changes will become effective on October 18, 2010.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 34–62758 (August 23, 2010), 75 FR 52792 (August 27, 2010) (SR–CBOE–2010–075).

[4] *See* Securities Exchange Act Release No. 34–62878 (September 9, 2010), 75 FR 56627 (September 16, 2010) (SR–CBOE–2010–079).

[5] *See* Securities Exchange Act Release No. 34–63000 (September 28, 2010), 75 FR 61549 (October 5, 2010) (SR–CBOE–2010–089).

[6] 15 U.S.C. 78f(b).

Section 6(b)(4)[7] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities.

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 not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A)(ii)[8] of the Act and subparagraph (f)(2) of Rule 19b–4[9] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2010–093 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–2010–093. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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–2010–093 and should be submitted on or before November 19, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–27359 Filed 10–28–10; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63170; File No. SR–NYSEAmex-2010–99]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC To Establish a Pilot Program to List Series With Additional Expiration Months for Each Class of Options Opened for Trading on the Exchange

October 25, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on October 22, 2010, NYSE Amex LLC ("NYSE Amex" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt Commentary .11 to NYSE Amex Options Rule 903 to establish a Pilot Program to list additional expiration months for each class of options opened for trading on the Exchange. The text of the proposed rule change is available at the Exchange's principal office, on the Commission's Web site at *http://www.sec.gov,* at the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements

[1] 15 U.S.C. 78s(b)(1).

[2] 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

The Exchange proposes to adopt a Pilot Program to list additional expiration months for each class of options opened for trading on the Exchange, similar to a Pilot Program recently approved for use by the International Securities Exchange, Inc. ("ISE"),[3] by adding proposed Commentary .11 to NYSE Amex Options Rule 903, Series of Options Open for Trading.

Pursuant to NYSE Amex Rule 903(b), the Exchange currently opens four expiration months for each class of options open for trading on the Exchange, the first two being the two nearest months, regardless of the quarterly cycle on which that class trades; the third and fourth being the next two months of the quarterly cycle previously designated for that specific class. For example, if the Exchange listed in late May a new equity option on a January-April-July-October quarterly cycle, the Exchange would list the two nearest term months (June and July) and the next two months of the cycle (October and January). When the June series expires, the Exchange would add the August series as the next nearest month. And when the July series expires, the Exchange would add the September series.

The Exchange believes that there is market demand for a greater number of expiration months. The Exchange therefore proposes to adopt a Pilot Program pursuant to which it will list up to an additional two expiration months, for a total of six expiration months for each class of options open for trading on the Exchange. The proposal will become effective on a pilot basis for a period of twelve months to commence on the next full month after approval is received to establish the pilot program. Under the proposal, the additional months listed pursuant to the pilot program will result in four consecutive expiration months plus two months from the quarterly cycle. For example, for option classes in the January cycle that have expiration months of June, July, October, and January, the Exchange would additionally list the August and September series. For options classes in the February quarterly cycle that have expiration months of October, November, February, and May, the Exchange would additionally list the December and January series. Under the proposal, no additional LEAP Series will be created.

The Exchange seeks to limit the proposed rule change to 20 actively traded options classes. By limiting the pilot to a small number of classes, the Exchange will be able to gauge interest in the pilot while limiting any additional demands on system resources. It has been estimated that this pilot could add up to six or seven percent to current quote traffic, although changes in market maker quoting behavior may reduce that increase by up to half. The Exchange believes that a limited pilot is a prudent step to determine actual market demand for additional expiration months.

If the Exchange were to propose an extension or an expansion of the pilot program, or should the Exchange propose to make the pilot program permanent, NYSE Amex will submit, along with any filing proposing such amendments to the pilot program, a pilot program report ("Report") that will provide an analysis of the Pilot Program covering the first nine months of the pilot program and shall submit the Report to the Commission at least sixty (60) days prior to the expiration date of the pilot program. The Report will include, at a minimum: (1) Data and written analysis on the open interest and trading volume in the classes for which additional expiration months were opened; (2) an assessment of the appropriateness of the options classes selected for the pilot program; (3) an assessment of the impact of the pilot program on the capacity on NYSE Amex, OPRA, and on market data vendors (to the extent data from market data vendors is available); (4) any capacity problems or other problems that arose during the operation of the pilot program and how NYSE Amex addressed such problems; (5) any complaints that NYSE Amex received during the operation of the pilot program and how NYSE Amex addressed them; and (6) any additional information that would assist the Commission in assessing the operation of the Pilot Program.

Finally, the Exchange represents that it has the necessary systems capacity to support new options series that will result from the introduction of additional expiration months listed pursuant to this proposed rule change.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934[4] (the "Act") in general, and furthers the objectives of Section 6(b)(5) of the Act[5] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. In particular, the Exchange believes listing additional near-term expiration months will offer investors more variety in trading options series that were previously not available. The Exchange believes this proposal will also generate additional volume in these options classes without significantly taxing system resources.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially

[3] *See* Exchange Act Release No. 63104 (October 14, 2010) approving SR–ISE–2010–91.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) 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.

similar to that of another exchange that has been approved by the Commission.[8] Therefore, the Commission designates the proposal operative upon filing.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–2010–99 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–NYSEAmex–2010–99. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2010–99 and should be submitted on or before November 19, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–27337 Filed 10–28–10; 8:45 am]

BILLING CODE 8011–01–P

[8] *See supra* note 3.

[9] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63171; File No. SR–BX–2010–071]

Self-Regulatory Organizations; NASDAQ OMX BX; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BX Rules 2270 and 2910 To Reflect Changes to Corresponding FINRA Rule 2261

October 25, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 20, 2010, NASDAQ OMX BX, Inc. (the "Exchange" or "BX") 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 primarily by the Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] 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 is filing this proposed rule change to amend BX Rules 2270 and 2910 to reflect recent changes to a corresponding rule of the Financial Industry Regulatory Authority ("FINRA"), which will result in consolidating BX Rules 2270 and 2910 into BX Rule 2261. The Exchange proposes to implement the proposed rule change immediately. The text of the proposed rule change is below. Proposed new language is *underlined*; proposed deletions are in [brackets].

* * * * *

2261. Disclosure of Financial Condition

Exchange Members shall comply with FINRA Rule 2261 as if such Rule were part of the Rules of the Exchange.

* * * * *

[2270. Disclosure of Financial Condition to Customers]

Exchange Members shall comply with NASD Rule 2270 as if such Rule were part of the Rules of the Exchange.

FINRA is in the process of consolidating certain NASD rules into a new FINRA rulebook. If the provisions of NASD Rule 2270 are transferred into the FINRA rulebook, then Equity Rule 2270 shall be construed to require Exchange members to comply with the FINRA rule corresponding to NASD Rule 2270 (regardless of whether such rule is renumbered or amended) as if such rule were part of the Rules of the Exchange.]

* * * * *

[2910. Disclosure of Financial Condition to Other Members]

Any Exchange member who is a party to an open transaction or who has on deposit cash or securities of another member shall furnish upon written request of the other member a statement of its financial condition as disclosed in its most recently prepared balance sheet.]

* * * * *

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.

[3] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Many of Exchange's rules are based on rules of FINRA (formerly the National Association of Securities Dealers ("NASD")). During 2008, FINRA embarked on an extended process of moving rules formerly designated as "NASD Rules" into a consolidated FINRA rulebook. In most cases, FINRA has renumbered these rules, and in some cases has substantively amended them. Accordingly, the Exchange initiated a process of modifying its rulebook to ensure that the Exchange rules corresponding to FINRA/NASD rules continue to mirror them as closely as practicable. The Exchange proposes to update its rules to reflect changes BX Rules 2270 and 2910 which corresponds to FINRA Rule 2261.

BX Rule 2270 (Disclosure of Financial Condition to Customers) and BX Rule 2910 (Disclosure of Financial Condition to Other Members) formerly corresponded to NASD Rule 2270 (Disclosure of Financial Condition to Customers) and NASD Rule 2910 (Disclosure of Financial Condition to Other Members). In SR–FINRA–2009–081,[4] FINRA re-designated NASD Rules 2270 and 2910 as FINRA Rule 2261 and made substantive amendments to strengthen and simplify the rules.

More specifically, the current BX Rule 2270, which incorporates NASD Rule 2270 by reference, requires that the members make information relative to a member's financial condition, as disclosed in its most recent balance sheet, available for inspection by any bona fide regular customer upon request. In FINRA SR–2009–081, FINRA provided members the option of delivering their balance sheet, in paper or electronic form, to customers who request it. Additionally, if the delivery is electronic, the requesting customer must provide consent to receive the balance sheet in electronic form to ensure that such information is accessible to the customer.

This proposed filing also addresses BX Rule 2910, which compares to the former NASD Rule 2910. BX Rule 2910 requires that any member that is a party to an open transaction or who has on deposit cash or securities of another member to furnish, upon the written request of the other member, a statement of its financial condition as disclosed in its most recently prepared balance sheet. In SR–FINRA–2009–081,[5] FINRA amended NASD Rule 2910 and consolidated it within FINRA Rule 2261 to require that members provide to other members the balance sheet that was prepared in accordance with the member's usual practice or as required by state or federal securities laws or any corresponding rule or regulation. Also, FINRA amended the provision to require that members be permitted to provide their balance sheet to other members in paper or electronic form; however, this does not require obtaining consent of the other members for delivery.

The Exchange believes that BX Rule 2270 and 2910 should be consolidated and amended to reflect the provisions in the new FINRA 2261. For clarification, this results in deleting BX Rules 2270 and 2910. This will allow customers and other members to continue to have access to a copy of the member's most recent balance sheet at any time upon request while simplifying the provisions. The Exchange is adopting the new FINRA rule in full by incorporating by reference FINRA Rule 2261 into the proposed BX Rule 2261.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and with Sections 6(b)(5) of the Act,[7] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed changes will conform BX Rules 2270 and 2910 to recent changes made to corresponding FINRA Rule 2261 to promote application of consistent regulatory standards.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6)[9] thereunder in that it effects a change that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[10] However, Rule 19b–4(f)(6)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative upon filing. The Exchange notes that the changes are identical to changes made by FINRA approved by the Commission, because the Exchange is incorporating those changes.[12] BX proposes to incorporate the FINRA rule by reference. For these reasons, the Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay, and hereby grants such waiver.[13]

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

[4] Securities Exchange Act Release No. 61540 (February 18, 2010), 75 FR 8771 (February 25, 2010) (SR–FINRA–2009–081).

[5] *See supra* note 4.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, BX has given the Commission written notice of its 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 on which the Exchange filed the proposed rule change.

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] *Id.*

[12] *See supra* note 4.

[13] For the purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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, as amended, 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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–BX–2010–071 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–BX–2010–071. This file number should be included on the subject line if e-mail 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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions.

You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2010–071 and should be submitted on or before November 19, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–27339 Filed 10–28–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63174; File No. 4–617]

Study on Extraterritorial Private Rights of Action

AGENCY: Securities and Exchange Commission.

ACTION: Request for Comments.

SUMMARY: Section 929Y of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") directs the Securities and Exchange Commission (the "Commission") to solicit public comment and thereafter conduct a study to determine the extent to which private rights of action under the antifraud provisions of the Securities Exchange Act of 1934 (the "Exchange Act") should be extended to cover transnational securities fraud. The Commission is soliciting comment on this question and on related questions.

DATES: The Commission will accept comments regarding issues related to the study on or before February 18, 2011.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number 4–617 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 4–617. This file number should be included on the subject line if e-mail is used. To help us 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*). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: John W. Avery, Office of the General Counsel, at (202) 551–5107, or Robert Peterson, Office of International Affairs, at (202) 551–6696, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a recent decision in *Morrison* v. *National Australia Bank,* 130 S. Ct. 2869 (2010), the Supreme Court significantly limited the extraterritorial scope of Section 10(b) of the Exchange Act. In the Dodd-Frank Act, Congress restored the ability of the Commission and the United States to bring actions under Section 10(b) in cases involving transnational securities fraud. Congress further directed the Commission to conduct a study to determine whether, and to what extent, private plaintiffs should also be able to bring such actions. Consideration of the *Morrison* decision and of extending the extraterritorial scope of the antifraud provisions of the Exchange Act to private actions raises important questions touching on the Commission's mandate to protect investors, to maintain fair, orderly and efficient markets, and to facilitate capital formation. It also raises issues regarding international comity and the respect that governments afford each other regarding their decisions on regulation of their home markets. Exploration of these issues will also help inform how the Commission can best protect investors and the integrity of U.S. markets in an environment in which a significant volume of securities transactions are conducted across borders.

II. Background

In *Morrison,* the Supreme Court considered "whether § 10(b) of the Securities Exchange Act of 1934 provides a cause of action to foreign plaintiffs suing foreign and American defendants for misconduct in connection with securities traded on foreign exchanges." The text of the Exchange Act had been silent as to the transnational reach of Section 10(b). In a decision issued on June 24, 2010, the

[14] 17 CFR 200.30–3(a)(12).

Supreme Court said: "When a statute gives no clear indication of an extraterritorial application, it has none." *Morrison,* 130 S. Ct. at 2878. "[T]here is no affirmative indication in the Exchange Act that § 10(b) applies extraterritorially," the Court found, "and we therefore conclude that it does not." *Id.* at 2883. Thus, the Court concluded, "it is in our view only transactions in securities listed on domestic exchanges, and domestic transactions in other securities, to which § 10(b) applies." *Id.* at 2884 (footnote omitted). The Court summarized the test as follows:

> Section 10(b) reaches the use of a manipulative or deceptive device or contrivance only in connection with the purchase or sale of a security listed on an American stock exchange, and the purchase or sale of any other security in the United States.

Id. at 2888.

The *Morrison* decision rejected long-standing precedents in most Federal courts of appeals that applied some variation or combination of an "effects" test and a "conduct" test to determine the extraterritorial reach of Section 10(b) of the Exchange Act. See, *e.g., Alfadda* v. *Fenn,* 935 F.2d 475, 478 (2d Cir. 1991); *Itoba Ltd* v. *LEP Group PLC,* 54 F.3d 118, 121–22 (2d Cir. 1995). The effects test centered its inquiry on whether domestic investors or markets were affected as a result of actions occurring outside the United States. *Europe and Overseas Commodity Traders, S.A.* v. *Banque Paribas London,* 147 F.3d 118, 125 (2d Cir. 1998). See also *Psimenos* v. *E.F. Hutton & Co.,* 722 F.2d 1041, 1045 (2d Cir. 1983). By contrast, the conduct test focused "on the nature of [the] conduct within the United States as it relates to carrying out the alleged fraudulent scheme." *Psimenos,* 722 F.2d at 1045.

On July 21, 2010, less than a month after the decision in *Morrison,* President Obama signed the Dodd-Frank Act. Section 929P of the Dodd-Frank Act amended the Exchange Act to provide that the United States district courts shall have jurisdiction over an action brought or instituted by the Commission or the United States alleging a violation of the antifraud provisions of the Exchange Act involving:

(1) Conduct within the United States that constitutes significant steps in furtherance of the violation, even if the securities transaction occurs outside the United States and involves only foreign investors; or

(2) Conduct occurring outside the United States that has a foreseeable substantial effect within the United States.[1]

Under section 929Y of the Dodd-Frank Act, the Commission is required to conduct a study to determine whether *private* rights of action should be similarly extended. The report of the study must be submitted and recommendations made to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House not later than January 21, 2012.

III. Request for Comments

Section 929Y(a) of the Dodd-Frank Act directs the Commission to solicit public comment on whether the scope of the antifraud provisions of the Exchange Act in cases of transnational securities fraud should be extended to private rights of action to the same extent as that provided to the Commission by Section 929P, or to some other extent.[2] Section 929Y(b) directs that the study shall consider and analyze, among other things—

(1) The scope of such a private right of action, including whether it should extend to all private actors or whether it should be more limited to extend just to institutional investors or otherwise;

(2) What implications such a private right of action would have on international comity;

(3) The economic costs and benefits of extending a private right of action for transnational securities frauds; and

(4) Whether a narrower extraterritorial standard should be adopted.

Accordingly, we request comment on these issues and questions. We also encourage commenters to:

- Propose the circumstances, if any, in which a private plaintiff should be allowed to pursue claims under the antifraud provisions of the Exchange Act with respect to a particular security where the plaintiff has purchased or sold the security outside the United States. Does it make a difference whether the security was issued by a U.S. company or by a non-U.S. company? Does it make a difference whether the security was purchased or sold on a foreign stock exchange or whether it was purchased or sold on a non-exchange trading platform or other alternative trading system outside of the United States? Does it make a difference whether the company's securities are traded exclusively outside of the United States?
- If you disagree with extending the test set forth in Section 929P to private plaintiffs, what other test would you propose?
- Should there be an effects test, a conduct test, a combination of the two, or another test?
- Address whether any such test should be limited only to certain types of private plaintiffs, such as United States citizens or residents, or such as institutional investors. How would such investors be defined?
- Identify any cases that have been dismissed as a result of *Morrison* or pending cases in which a challenge based on *Morrison* has been filed. Describe the facts of the case.
- Identify any cases brought prior to *Morrison* that likely could not have been brought or maintained after *Morrison*. Describe the facts of the case.
- In *Morrison,* the Supreme Court held that in the case of securities that are not listed on an American stock exchange, Section 10(b) only reaches the use of a manipulative or deceptive device or contrivance in connection with the purchase or sale of a security *in the United States.* Address the criteria for determining where a purchase or sale can be said to take place in various transnational securities transactions. Discuss the degree to which investors know, when they place a securities purchase or sale order, whether the order will take place on a foreign stock exchange or on a non-exchange trading platform or other alternative trading system outside of the United States.
- What would be the implications on international comity and international relations of allowing private plaintiffs to pursue claims under the antifraud provisions of the Exchange Act in cases of transnational securities fraud? Identify any studies that purport to show the effect that the extraterritorial application of domestic laws have on international comity or international relations.
- Discuss the cost and benefits of allowing private plaintiffs to pursue claims under the antifraud provisions of

[1] With respect to U.S. Government and Commission actions, the Dodd-Frank Act largely codified the long-standing appellate court interpretation of the law that had existed prior to the Supreme Court's decision in *Morrison* by setting forth an expansive conducts and effects test, and providing that the inquiry is one of subject matter jurisdiction. The Dodd-Frank Act made similar changes to the Securities Act of 1933 and the Investment Advisers Act of 1940.

[2] Section 929Y(a) of the Dodd-Frank Act provides that the Commission "shall solicit public comment and thereafter conduct a study to determine the extent to which private rights of action under the antifraud provisions of the Securities Exchange Act of 1934 (15 U.S.C. 78u–4) should be extended to cover: Conduct within the United States that constitutes a significant step in the furtherance of the violation, even if the securities transaction occurs outside the United States and involves only foreign investors; and conduct occurring outside the United States that has a foreseeable substantial effect within the United States."

the Exchange Act in cases of transnational securities fraud, including the costs and benefits to domestic and international financial systems and securities markets. Identify any studies that have been conducted that purport to show the positive or negative implications that such a private right of action would have.

• What remedies outside of the United States would be available to U.S. investors who purchase or sell shares on a foreign stock exchange, or on a non-exchange trading platform or other alternative trading system outside of the United States, if their securities fraud claims cannot be brought in U.S. courts?

• What impact would the extraterritorial application of the private right of action have on the protection of investors? On the maintenance of fair, orderly and efficient markets in the United States? On the facilitation of capital formation?

• Address any other considerations commenters would like to comment on to assist the Commission in determining whether to recommend changes to the extraterritorial scope of the antifraud private rights of action under the Exchange Act.

By the Commission.

Dated: October 25, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–27357 Filed 10–28–10; 8:45 am]

BILLING CODE 8011–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Notice of Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of Approved Projects.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: September 1, 2010, through September 30, 2010.

ADDRESSES: Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, PA 17102–2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238–0423, ext. 306; fax: (717) 238–2436; e-mail: *rcairo@srbc.net* or Stephanie L. Richardson, Secretary to the Commission, telephone: (717) 238–0423, ext. 304; fax: (717) 238–2436; e-mail: *srichardson@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(e) and 18 CFR 806.22(f) for the time period specified above:

Approvals By Rule Issued Under 18 CFR 806.22(e)

1. Hazleton Creek Properties, LLC; Hazleton Creek Properties, LLC—Mine Reclamation Site, ABR–201009108, Hazleton City, Luzerne County, Pa.; Consumptive Use of up to 0.055 mgd; Approval Date: September 10, 2010.

Approvals By Rule Issued Under 18 CFR 806.22(f)

1. Chesapeake Appalachia, LLC, Pad ID: Vera, ABR–201009001, Fox Township, Sullivan County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: September 3, 2010.

2. Chief Oil & Gas LLC, Pad ID: Allen Drilling Pad #1, ABR–201009002, Asylum Township, Bradford County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: September 3, 2010.

3. Anadarko E&P Company LP, Pad ID: Plants Evergreen Farm Pad A, ABR–201009003, Cascade Township, Lycoming County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: September 3, 2010.

4. EOG Resources, Inc., Pad ID: OBERKAMPER Pad, ABR–201009004, Springfield Township, Bradford County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: September 3, 2010.

5. EOG Resources, Inc., Pad ID: ROBBINS Pad, ABR–201009005, Springfield Township, Bradford County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: September 3, 2010.

6. Pennsylvania General Energy Co. LLC, Pad ID: Shannon Todd Pad A, ABR–201009006, Todd Township, Huntingdon County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: September 3, 2010.

7. Chesapeake Appalachia, LLC, Pad ID: Alberta, ABR–201009007, Albany Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: September 3, 2010.

8. EOG Resources, Inc. Pad ID: MULLALY Pad, ABR–201009008, Ridgebury Township, Bradford County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: September 3, 2010.

9. Chesapeake Appalachia, LLC, Pad ID: SGL 289B, ABR–201009009, West Burlington Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: September 3, 2010.

10. Cabot Oil & Gas Corporation, Pad ID: King P1, ABR–201009010, Dimock Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: September 3, 2010.

11. Chesapeake Appalachia, LLC, Pad ID: Stoudt, ABR–201009011, Overton Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: September 3, 2010.

12. EOG Resources, Inc. Pad ID: GHC Pad A, ABR–201009012, Lawrence Township, Clearfield County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: September 3, 2010.

13. Anadarko E&P Company LP, Pad ID: COP Tract 685 Pad C, ABR–201009013, Cummings Township, Lycoming County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: September 3, 2010, including a partial waiver of 18 CFR 806.15.

14. Talisman Energy USA Inc., Pad ID: 03 003 Vanblarcom, ABR–201009014, Columbia Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: September 3, 2010.

15. EXCO Resources (PA), LLC, Pad ID: Litke 1H, 2H, ABR–20090425.1, Burnside Township, Centre County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 4, 2010, including a partial waiver of 18 CFR 806.15.

16. EXCO Resources (PA), LLC, Pad ID: Litke (7H & 8H), ABR–20090426.1, Burnside Township, Centre County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 4, 2010, including a partial waiver of 18 CFR 806.15.

17. Talisman Energy USA Inc., Pad ID: 05 035 Antisdel, ABR–201009015, Warren and Windham Townships, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: September 7, 2010.

18. Talisman Energy USA Inc., Pad ID: 05 036 Antisdel, ABR–201009016, Warren Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: September 7, 2010.

19. Talisman Energy USA Inc., Pad ID: 03 011 Eick, ABR–201009017, Columbia Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: September 7, 2010.

20. Talisman Energy USA Inc., Pad ID: 03 028 Jennings, ABR–201009018, Wells Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: September 7, 2010.

21. Talisman Energy USA Inc., Pad ID: 03 073 Ritz, ABR–201009019, Columbia Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: September 7, 2010.

22. Ultra Resources, Inc., Pad ID: State 811, ABR–201009020, Elk Township, Tioga County, Pa.; Consumptive Use of

up to 4.990 mgd; Approval Date: September 7, 2010, including a partial waiver of 18 CFR 806.15.

23. Ultra Resources, Inc., Pad ID: State 844, ABR–201009021, Elk Township, Tioga County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: September 7, 2010, including a partial waiver of 18 CFR 806.15.

24. EOG Resources, Inc., Pad ID: COP Pad J, ABR–201009022, Lawrence Township, Clearfield County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: September 8, 2010.

25. EOG Resources, Inc., Pad ID: PHC Pad S, ABR–201009023, Lawrence Township, Clearfield County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: September 8, 2010.

26. Talisman Energy USA Inc., Pad ID: 03 071 Wolf, ABR–201009024, Wells Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: September 8, 2010.

27. Talisman Energy USA Inc., Pad ID: 03 070 Wolf, ABR–201009025, Wells Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: September 8, 2010.

28. East Resources Management, LLC, Pad ID: Wood 496, ABR–201009026, Richmond Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 7, 2010.

29. East Resources Management, LLC, Pad ID: Fish 826, ABR–201009027, Middlebury Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 8, 2010.

30. XTO Energy Incorporated, Pad ID: Houseweart 8527H, ABR–201009028, Pine Township, Columbia County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 8, 2010.

31. East Resources Management, LLC, Pad ID: Guindon 706, ABR–201009029, Union Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 8, 2010.

32. EOG Resources, Inc. Pad ID: SGL 94 Pad A, ABR–201009030, Lawrence Township, Clearfield County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: September 8, 2010.

33. Chesapeake Appalachia, LLC, Pad ID: Williams, ABR–201009031, Ulster Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: September 9, 2010.

34. Talisman Energy USA Inc., Pad ID: 05 010 Willard S, ABR–201009032, Orwell Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: September 9, 2010.

35. Talisman Energy USA Inc., Pad ID: 05 023 Edsell, ABR–201009033, Pike Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: September 9, 2010.

36. Talisman Energy USA Inc., Pad ID: 05 024 Edsell, ABR–201009034, Pike Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: September 9, 2010.

37. Talisman Energy USA Inc., Pad ID: 05 069 Carrington, ABR–201009035, Orwell Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: September 9, 2010.

38. Chesapeake Appalachia, LLC, Pad ID: Troise, ABR–201009036, Sheshequin Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: September 9, 2010.

39. Chesapeake Appalachia, LLC, Pad ID: Decker Farms, ABR–201009037, Rush Township, Susquehanna County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: September 9, 2010.

40. EOG Resources, Inc. Pad ID: COP Pad P, ABR–201009038, Lawrence Township, Clearfield County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: September 9, 2010.

41. EOG Resources, Inc. Pad ID: PHC Pad T, ABR–201009039, Lawrence Township, Clearfield County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: September 9, 2010.

42. Anadarko E&P Company LP, Pad ID: WW Litke Pad B, ABR–201009040, Curtin Township, Centre County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: September 9, 2010, including a partial waiver of 18 CFR 806.15.

43. Chesapeake Appalachia, LLC, Pad ID: Keeler Hollow, ABR–201009041, Smithfield Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: September 10, 2010.

44. East Resources Management, LLC, Pad ID: Kalke 819, ABR–201009042, Chatham Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 10, 2010.

45. Anadarko E&P Company LP, Pad ID: COP Tract 290 Pad A, ABR–201009043, McHenry Township, Lycoming County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: September 10, 2010, including a partial waiver of 18 CFR 806.15.

46. Novus Operating, LLC, Pad ID: Sparrow Hawk, ABR–201009044, Covington Township, Tioga County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: September 10, 2010.

47. East Resources Management, LLC, Pad ID: Hotchkiss 472, ABR–201009045, Charleston Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 10, 2010.

48. Anadarko E&P Company LP, Pad ID: Douglas C Kinley Pad A, ABR–201009046, Lycoming Township, Lycoming County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: September 10, 2010.

49. Cabot Oil & Gas Corporation, Pad ID: Cosner P1R, ABR–201009047, Springville Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: September 10, 2010.

50. Anadarko E&P Company LP, Pad ID: COP Tract 289 Pad E, ABR–201009048, McHenry Township, Lycoming County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: September 10, 2010, including a partial waiver of 18 CFR 806.15.

51. East Resources Management, LLC, Pad ID: Lingle 1102, ABR–201009049, Deerfield Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 10, 2010.

52. East Resources Management, LLC, Pad ID: Erickson 448, ABR–201009050, Delmar Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 10, 2010.

53. East Resources Management, LLC, Pad ID: Williams 889, ABR–201009051, Deerfield Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 10, 2010.

54. Cabot Oil & Gas Corporation, Pad ID: FraserE P1, ABR–201009052, Forest Lake Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: September 10, 2010.

55. EOG Resources, Inc. Pad ID: JACKSON 1H Pad, ABR–201009053, Springfield Township, Bradford County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: September 10, 2010.

56. East Resources Management, LLC, Pad ID: Klettlinger 294, ABR–201009054, Delmar Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 10, 2010.

57. EOG Resources, Inc., Pad ID: SSHC Pad A, ABR–201009055, Lawrence Township, Clearfield County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: September 13, 2010.

58. Ultra Resources, Inc., Pad ID: Bergey 812, ABR–201009056, Gaines Township, Tioga County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: September 13, 2010.

59. Anadarko E&P Company LP, Pad ID: COP Tract 731 Pad A, ABR–201009057, Cummings Township, Lycoming County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: September 13, 2010, including a partial waiver of 18 CFR 806.15.

60. East Resources Management, LLC, Pad ID: Owlett 843, ABR–201009058,

Middlebury Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 13, 2010.

61. East Resources Management, LLC, Pad ID: Byrne 510, ABR–201009059, Rutland Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 13, 2010.

62. EOG Resources, Inc., Pad ID: HALSTEAD Pad, ABR–201009060, Ridgebury Township, Bradford County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: September 14, 2010.

63. Chesapeake Appalachia, LLC, Pad ID: Driscoll, ABR–201009061, Overton Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: September 14, 2010.

64. XTO Energy Incorporated, Pad ID: FOX 8501H, ABR–201009062, Shrewsbury Township, Lycoming County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 14, 2010.

65. East Resources Management, LLC, Pad ID: Seymour 599, ABR–201009063, Sullivan Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 15, 2010.

66. East Resources Management, LLC, Pad ID: Schmelzle 703, ABR–201009064, Union Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 15, 2010.

67. East Resources Management, LLC, Pad ID: Spencer 729, ABR–201009065, Liberty Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 15, 2010.

68. Chesapeake Appalachia, LLC, Pad ID: Delhagen, ABR–201009066, Rush Township, Susquehanna County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: September 15, 2010.

69. Chesapeake Appalachia, LLC, Pad ID: Burleigh, ABR–201009067, Wyalusing Borough, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: September 15, 2010.

70. Chief Oil & Gas LLC, Pad ID: Quava Drilling Pad #1, ABR–201009068, Davidson Township, Sullivan County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: September 15, 2010.

71. Chesapeake Appalachia, LLC, Pad ID: Bennett NMPY–38, ABR–201009069, Tuscarora Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: September 16, 2010.

72. Chief Oil & Gas LLC, Pad ID: Hemlock Hunting Club Drilling Pad #1, ABR–201009070, Elkland Township, Sullivan County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: September 16, 2010.

73. Chief Oil & Gas LLC, Pad ID: Wistar-Shaffer Tracts Drilling Pad #1, ABR–201009071, Shrewsbury Township, Sullivan County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: September 16, 2010.

74. Chesapeake Appalachia, LLC, Pad ID: Wygrala, ABR–201009072, Wysox Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: September 20, 2010.

75. Chesapeake Appalachia, LLC, Pad ID: Matt, ABR–201009073, Elkland Township, Sullivan County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: September 20, 2010.

76. XTO Energy Incorporated, Pad ID: Lucella 8564H, ABR–201009074, Moreland Township, Lycoming County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 20, 2010.

77. Talisman Energy USA Inc., Pad ID: 01 080 Ferguson, ABR–201009075, Granville Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: September 20, 2010.

78. Chesapeake Appalachia, LLC, Pad ID: Boyanowski, ABR–201009076, Meshoppen Township and Braintrim Township, Wyoming County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: September 20, 2010.

79. Chesapeake Appalachia, LLC, Pad ID: Rain, ABR–201009077, Elkland Township, Sullivan County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: September 20, 2010.

80. Talisman Energy USA Inc., Pad ID: 05 092 Upham, ABR–201009078, Pike Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: September 20, 2010.

81. Talisman Energy USA Inc., Pad ID: 05 074 Zimmerli, ABR–201009079, Orwell Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: September 20, 2010.

82. East Resources Management, LLC, Pad ID: Ingalls 710, ABR–201009080, Liberty Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 20, 2010.

83. East Resources Management, LLC, Pad ID: Talley 488, ABR–201009081, Covington Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 20, 2010.

84. Chesapeake Appalachia, LLC, Pad ID: Governale, ABR–201009082, Wysox Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: September 20, 2010.

85. Anadarko E&P Company LP, Pad ID: Gayla D Loch Pad A, ABR–201009083, Cogan House Township, Lycoming County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: September 20, 2010.

86. Chesapeake Appalachia, LLC, Pad ID: Connell, ABR–201009084, Cherry Township, Sullivan County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: September 20, 2010.

87. Southwestern Energy Production Company, Pad ID: Strong Pad, ABR–201009085, Herrick Township, Bradford County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: September 20, 2010.

88. Southwestern Energy Production Company, Pad ID: Ross Pad, ABR–201009086, Herrick Township, Bradford County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: September 20, 2010.

89. Chief Oil & Gas LLC, Pad ID: Lightner East Drilling Pad #1, ABR–201009087, Juniata Township, Blair County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: September 21, 2010.

90. East Resources Management, LLC, Pad ID: Smith 589, ABR–201009088, Richmond Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 22, 2010.

91. East Resources Management, LLC, Pad ID: Martin 421, ABR–201009089, Delmar Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 22, 2010.

92. East Resources Management, LLC, Pad ID: Schimmel 830, ABR–201009090, Farmington Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 22, 2010.

93. East Resources Management, LLC, Pad ID: Lopatofsky 287, ABR–201009091, Charleston Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 22, 2010.

94. East Resources Management, LLC, Pad ID: Worden 571, ABR–201009092, Charleston Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 22, 2010.

95. Chesapeake Appalachia, LLC, Pad ID: Foster, ABR–201009093, Wysox Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: September 23, 2010.

96. Enerplus Resources (USA) Corporation, Pad ID: Winner 4H, ABR–201009094, West Keating Township, Clinton County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 23, 2010.

97. East Resources Management, LLC, Pad ID: Empson 899, ABR–201009095, Deerfield Township, Tioga County, Pa.;

Consumptive Use of up to 4.000 mgd; Approval Date: September 23, 2010.

98. East Resources Management, LLC, Pad ID: Burke 285, ABR–201009096, Charleston Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 23, 2010.

99. East Resources Management, LLC, Pad ID: Patterson 570, ABR–201009097, Charleston Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 24, 2010.

100. Williams Production Appalachia, LLC, Pad ID: Depue Well #2H, ABR–201009098, Franklin Township, Susquehanna County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 27, 2010.

101. Anadarko E&P Company LP, Pad ID: Lycoming H&FC Pad B, ABR–201009099, Cogan House Township, Lycoming County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: September 27, 2010.

102. Chesapeake Appalachia, LLC, Pad ID: Curtis New, ABR–201009100, Asylum Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: September 27, 2010.

103. East Resources Management, LLC, Pad ID: Sherman 498, ABR–201009101, Richmond Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 27, 2010.

104. Chesapeake Appalachia, LLC, Pad ID: Hope, ABR–201009102, Meshoppen Township, Wyoming County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: September 28, 2010.

105. Chesapeake Appalachia, LLC, Pad ID: Kohler, ABR–201009103, Liberty Township, Tioga County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: September 28, 2010.

106. Chesapeake Appalachia, LLC, Pad ID: Jaishawoo, ABR–201009104, Auburn Township, Susquehanna County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: September 29, 2010.

107. Chesapeake Appalachia, LLC, Pad ID: Pinehollow, ABR–201009105, Rush Township, Susquehanna County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: September 29, 2010.

108. EOG Resources, Inc., Pad ID: DEMEO 1H Pad, ABR–201009106, Ridgebury Township, Bradford County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: September 30, 2010.

109. Anadarko E&P Company LP, Pad ID: Kenneth T Schriner Pad A, ABR–201009107, Gamble Township, Lycoming County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: September 30, 2010.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: October 22, 2010.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2010–27440 Filed 10–28–10; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Notice and Request for Comments

AGENCY: Surface Transportation Board, DOT.

ACTION: 30-day notice of request for approval: Report of Fuel Cost, Consumption, and Surcharge Revenue.

SUMMARY: As required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3519 (PRA), the Surface Transportation Board (STB or Board) has submitted a request to the Office of Management and Budget (OMB) for an extension of approval for the collection of the Rail Fuel Surcharge Report. The Board previously published a notice about this collection in the **Federal Register** on June 29, 2010, at 75 FR 37,522. That notice allowed for a 60-day public review and comment period. No comments were received. The current notice corrects an error in prior notices about this report, which incorrectly stated that the frequency of the collection was monthly with a per-response burden of one hour. As correctly stated in this notice, the reports are collected quarterly with a per-response burden of 3 hours. The Rail Fuel Surcharge Report is described in detail below. Comments may now be submitted to OMB concerning (1) the accuracy of the Board's burden estimates; (2) ways to enhance the quality, utility, and clarity of the information collected; (3) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate; and (4) whether this collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility.

Description of Collection

Title: Report of Fuel Cost, Consumption, and Surcharge Revenue.

OMB Control Number: 2140–0014.

STB Form Number: None

Type of Review: Extension without change.

Respondents: Class I railroads (railroads with operating revenues exceeding $250 million in 1991 dollars).

Number of Respondents: 7.

Estimated Time per Response: 3 hours.

Frequency: Quarterly.

Total Burden Hours (annually including all respondents): 84 hours.

Total "*Non-hour Burden*" *Cost:* None identified.

Needs and Uses: Under 49 U.S.C. 10702, the Surface Transportation Board has the authority to address the reasonableness of a rail carrier's practices. This information collection is intended to permit the Board to monitor the current fuel surcharge practices of the Class I carriers. Failure to collect this information would impede the Board's ability to monitor the current fuel surcharge practices of Class I carriers. The Board has authority to collect information about rail costs and revenues under 49 U.S.C. 11144 and 11145.

Retention Period: Information in this report is maintained on the Board's Web site for a minimum of one year and is otherwise maintained by the Board for a minimum of two years.

DATES: Comments on this information collection should be submitted by November 29, 2010.

ADDRESSES: Written comments should be identified as "Paperwork Reduction Act Comments, Surface Transportation Board, Rail Fuel Surcharge Report." These comments should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Chandana Achanta, Surface Transportation Board Desk Officer, by fax at (202) 395–6974; by mail at Room 10235, 725 17th Street, NW., Washington, DC 20503; or by e-mail at *OIRA_SUBMISSION@OMB.EOP.GOV.*

For Further Information or To Obtain a Copy of the STB Form, Contact: For additional information or copies of the Rail Fuel Surcharge Report form, contact Marcin Skomial at (202) 245–0344 or *skomialm@stb.dot.gov,* or Paul Aguiar at (202) 245–0323 or *paul.aguiar@stb.dot.gov.* [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Under the PRA, a Federal agency conducting or sponsoring a collection of information must display a currently valid OMB control number. A collection of

information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Under 3506(b) of the PRA, Federal agencies are required to provide, concurrent with an agency's submitting a collection to OMB for approval, a 30-day notice and comment period, through publication in the **Federal Register**, concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: October 26, 2010.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2010–27419 Filed 10–28–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Eleventh Meeting: RTCA Special Committee 214: Working Group 78: Standards for Air Traffic Data Communication Services

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 214: Working Group 78: Standards for Air Traffic Data Communication Services.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the RTCA Special Committee 214: Working Group 78: Standards for Air Traffic Data Communication Services.

DATES: The meeting will be held November 15–19, 2010 from 9 a.m.–5 p.m.

ADDRESSES: The meeting will be held at Lockheed Martin Information Systems and Global Solutions, 9231 Corporate Blvd., Rockville, Maryland 20850. Host: Paul Mettus.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a RTCA Special Committee 214: Working Group 78: Standards for Air Traffic Data Communication Services meeting. The agenda will include:

Additional Information

Additional information and all the documents to be considered can be found in the Web site *http://www.faa.gov/go/SC214*.

Meeting Objectives

- Review planning and content of SPR and INT drafts version 0.H and 0.I.
- Complete draft Validation Plan.
- Review progress Oceanic/Continental Integration.
- Agree on approach for Oceanic/Continental Integration.
- Review of Position Papers.
- Duration of the committee (currently until end of 2011).
- Publication approach (one or two publications).
- Possible Impact of the ATMAC recs (meeting October 28th).
- Benefits Oceanic/Continental Integration Approach.
- Now TORS(OCL/DSC, update ED 154/Doxxx, * * *).
- Outcome FRAC/consultation DO306/ED 122 and Publication.
- Seamless ATS Data Link and Patent Status.
- A/G Trajectory Information Exchange.
- Backward Compatibility of Data link Implementations (*e.g.* 214/78 A/C with ATNB1 ground systems (and vice versa); integrate and non-integrated avionics solutions).
- Position Papers shall be provided to the Co-Chairman by October 31st, 2010.
- Review and Update the work plan; and Plenary/Subgroup meetings plan for 2011.

Agenda

Day 1, Monday 15 November, 2010

09:00–12:30 Plenary Session

- Welcome/Introductions/Administrative Remarks.
- Approval of the Agenda.
- Approval of the Summary of Plenary 10.
- Review Action Item Status.
- Coordination Activities.
- Briefing from other SCs and WGs.
- Briefing from recent ICAO NAT and OPLINK meetings.
- Outcome FRAC/Consultation DO306/ED122 Change 1.
- Review of Work so far.
- SPR & INT documents version H and I.
- SC–214/WG–78 TORs and Work Plan.
- Review of Position Papers and Contributions.

13:30–17:00: Plenary Session

- Continuation Review of Position Papers and Contributions.
- Approval of Sub-Group Meeting Objectives.

Day 2, Tuesday November 15, 2010 9:00–17:00 Sub-Group Sessions

Day 3, Wednesday November 16, 2010 9:00–17:00 Sub-Group Sessions

Day 4, Thursday November 18, 2010 9:00–17:00 Plenary Session

- Briefing from SC 186/WG51 on Flight Interval Management (FIM) Status.
- Configuration Sub-Group Report & Assignment of Action Items.
- Validation Sub-group Report & Assignment of Action Items.
- VDL Sub-group Report & Assignment of Action Items.
- Review Dates and Locations 2011 Plenary and SG Meetings.
- Any Other Business.
- Adjourn.

Day 5, Friday November 19, 2010 Sub-Group Sessions

9:00–16:00: Sub-Group Sessions

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC on October 20, 2010.

Robert L. Bostiga,

RTCA Advisory Committee.

[FR Doc. 2010–27260 Filed 10–28–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 25, 2010.

The Department of the Treasury will submit the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. A copy of the submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW, Suite 11010, Washington, DC 20220.

DATES: Written comments should be received on or before November 29, 2010 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–2169.

Type of Review: Extension without change to a currently approved collection.

Title: NOTICE–2010–30 (NOTICE 107632–10) Transitional Guidance for Taxpayers Claiming Relief Under the Military Spouses Residency Relief Act for Taxable Year 2009.

Abstract: This notice provides relief for tax year 2009 to civilian spouses of servicemembers who claim the benefits of the taxation provisions under the Military Spouses Residency Relief Act ("MSRRA"). This notice provides certain civilian spouses working in a U.S. territory during 2009 but claiming a residence or domicile in one of the 50 States or the District of Columbia for paying the tax due for their 2009 Federal income tax returns. Additionally, this notice provides certain civilian spouses working in one of the 50 States or the District of Columbia during 2009 but claiming a residence or domicile in a U.S. territory under MSRRA with guidance on filing claims for refund of Federal income taxes that their employers withheld and remitted to the IRS or estimated tax payments the taxpayers paid to the IRS during 2009.

Respondents: Individuals and Households.

Estimated Total Burden Hours: 6,200 hours.

OMB Number: 1545–1610.

Type of Review: Revision to a currently approved collection.

Title: Application for Reward for Original Information.

Form: 5500 and schedules.

Abstract: Form 5500 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.

Respondents: Private Sector: Businesses or other for-profit.

Estimated Total Burden Hours: 320,000 hours.

Bureau Clearance Officer: R. Joseph Durbala, Internal Revenue Service, 1111 Constitution Avenue, NW., Room 6129, Washington, DC 20224; (202) 622–3634.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2010–27343 Filed 10–28–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Determination of Foreign Exchange Swaps and Forwards

AGENCY: Department of the Treasury, Departmental Offices.

ACTION: Notice and request for comments.

SUMMARY: The Commodity Exchange Act ("CEA"), as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"),[1] permits the Secretary of the Treasury to issue a written determination exempting foreign exchange swaps, foreign exchange forwards, or both, from the definition of a "swap" under the CEA. The Secretary has made no determination whether an exemption is warranted. Although not required under the Dodd-Frank Act, the Department of the Treasury invites comment on whether such an exemption for foreign exchange swaps, foreign exchange forwards, or both, is warranted and on the application of the factors that the Secretary must consider in making a determination regarding these instruments.

DATES: Written comments must be received on or before November 29, 2010, to be assured of consideration.

ADDRESSES: *Submission of Comments:* Please submit comments electronically through the Federal eRulemaking Portal—"Regulations.gov." Go to *http://www.regulations.gov* to submit or view public comments. The "How to Use this Site" and "User Tips" link on the Regulations.gov home page provides information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.

Please include your name, affiliation, address, e-mail address and telephone number(s) in your comment. All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Office of Financial Institutions Policy, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, (202) 622–2730, *ofip@do.treas.gov.*

SUPPLEMENTARY INFORMATION: Section 721 of the Dodd-Frank Act[2] amends section 1a of the CEA which, in relevant part, defines the term "swap" under the CEA. Section 1a(47)(E) of the CEA authorizes the Secretary of the Treasury to make a written determination that "foreign exchange swaps"[3] or "foreign exchange forwards,"[4] or both, should not be regulated as swaps under the CEA,[5] as amended by the Dodd-Frank Act, and are not structured to evade the Dodd-Frank Act in violation of any rule promulgated by the Commodity Futures Trading Commission ("CFTC").[6]

In making the determination whether to exempt foreign exchange swaps and/or foreign exchange forwards,[7] the Secretary of the Treasury must consider the following factors:

(1) Whether the required trading and clearing of foreign exchange swaps and foreign exchange forwards would create systemic risk, lower transparency, or threaten the financial stability of the United States;

(2) Whether foreign exchange swaps and foreign exchange forwards are already subject to a regulatory scheme that is materially comparable to that established by the CEA for other classes of swaps;

(3) The extent to which bank regulators of participants in the foreign exchange market provide adequate supervision, including capital and margin requirements;

(4) The extent of adequate payment and settlement systems; and

(5) The use of a potential exemption of foreign exchange swaps and foreign exchange forwards to evade otherwise applicable regulatory requirements.[8]

The Treasury Department is soliciting comments on the above factors, and any relevant information that may bear on the regulation of foreign exchange swaps and foreign exchange forwards as "swaps" under the CEA, to assist in the Secretary's consideration of whether to issue a determination under section 1a(47) of the CEA.

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

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

[3] 7 U.S.C. 1a(25) ("a transaction that solely involves—(A) an exchange of 2 different currencies on a specific date at a fixed rate that is agreed upon on the inception of the contract covering the exchange; and (B) a reverse exchange of the 2 currencies described in subparagraph (A) at a later date and at a fixed rate that is agreed upon on the inception of the contract covering the exchange.").

[4] 7 U.S.C. 1a(24) ("a transaction that solely involves the exchange of 2 different currencies on a specific future date at a fixed rate agreed upon on the inception of the contract covering the exchange.").

[5] 7 U.S.C. 1(a)(47)(E)(i)(I).

[6] 7 U.S.C. 1(a)(47)(E)(i)(II).

[7] Notwithstanding any such determination by the Secretary of the Treasury, all foreign exchange swaps and forwards must be reported to a swap data repository, and swap dealers and major swap participants that are parties to foreign exchange swaps and forwards transactions must conform to business conduct standards pursuant to the requirements of the Dodd-Frank Act and implementing regulations thereunder.

[8] 7 U.S.C. 1b(a).

In addition, the Treasury Department is particularly interested in comments on the questions set forth below:

(1) Are foreign exchange swaps and/or foreign exchange forwards qualitatively different from other classes of swaps in a way that makes them ill-suited for regulation as "swaps" under the CEA? [9] Are there similarities between foreign exchange swaps and/or foreign exchange forwards and other products not defined as swaps under the CEA?

(2) Are there objective differences between swaps and foreign exchange swaps and/or foreign exchange forwards that warrant an exemption for either or both of these instruments? [10]

(3) Are there objective differences between long-dated and short-dated foreign exchange forwards and swaps such that one class may be less suited to regulation as "swaps" under the CEA than the other? Is the same true for dealer to dealer transactions versus transactions where one counterparty is a non-dealer? Similarly, does one or more of the above-referenced, five statutory factors support the application of certain requirements set forth in the CEA, but not others (e.g., centralized clearing, but not exchange trading), to foreign exchange swaps and/or foreign exchange forwards?

(4) What are the primary risks in the foreign exchange swaps and forwards market, how significant are these risks, and how are these risks currently managed by market participants? Would centralized clearing and exchange trading address these risks? To what extent do current payment-versus-payment settlement arrangements address settlement risk?

(5) To what extent is counterparty credit risk a significant concern in the foreign exchange swaps and forwards markets? If so, to what extent do current market practices (including netting and bilateral collateral support arrangements) mitigate these risks? What evidence, particularly during the period between 2007 and present, illustrate how current market practices have either addressed, or failed to respond, to these risks?

(6) Are there ways to mitigate the risks posed by the trading of foreign exchange swaps or foreign exchange forwards without subjecting these instruments to regulation under the CEA?

(7) Are there existing safeguards or systems that should be enhanced in order to protect against systemic or other risks in the foreign exchange swaps and forwards markets? What considerations are relevant to the application of Title VIII of the Dodd-Frank Act to the foreign exchange swaps and forwards markets, specifically to enhance supervision, strengthen risk management, and lower systemic risk?

(8) Given that the Dodd-Frank Act requires all foreign exchange swaps and forwards be reported to a swap data repository, what is the current standard or practice in the foreign exchange market for reporting trades?

(9) What would be the likely effects of mandatory U.S. clearing of foreign exchange swaps and/or forwards on foreign exchange market liquidity in the U.S. dollar? What would be the impact on the operations of U.S. end-users and U.S. dealers?

(10) What other factors should the Secretary of the Treasury consider in determining whether to exempt foreign exchange swaps and/or forwards pursuant to section 1a(47) of the CEA?

In addition, commenters are encouraged to submit supporting materials, including relevant transactional data, that would assist the Secretary's consideration of the issues relating to an exemption for foreign exchange swaps or foreign exchange forwards, or both, under section 1a(47) of the CEA.

Dated: October 19, 2010.

Mary J. Miller,

Assistant Secretary for Financial Markets.

[FR Doc. 2010–27437 Filed 10–28–10; 8:45 am]

BILLING CODE 4810–25–P

[9] 7 U.S.C. 1b(b)(1).

[10] 7 U.S.C. 1b(b)(2).

Federal Register

Friday,
October 29, 2010

Part II

Department of Education

34 CFR Parts 600, 602, 603, et al.
Program Integrity Issues; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 600, 602, 603, 668, 682, 685, 686, 690, and 691

[Docket ID ED–2010–OPE–0004]

RIN 1840–AD02

Program Integrity Issues

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary is improving integrity in the programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA), by amending the regulations for Institutional Eligibility Under the HEA, the Secretary's Recognition of Accrediting Agencies, the Secretary's Recognition Procedures for State Agencies, the Student Assistance General Provisions, the Federal Family Education Loan (FFEL) Program, the William D. Ford Federal Direct Loan Program, the Teacher Education Assistance for College and Higher Education (TEACH) Grant Program in part 686, the Federal Pell Grant Program, and the Academic Competitiveness Grant (AGC) and National Science and Mathematics Access to Retain Talent Grant (National Smart Grant) Programs.

DATES: These regulations are effective July 1, 2011 with the exception of the revision of subpart E of part 668, Verification and Updating of Student Aid Application Information. Revised subpart E of part 668 is effective July 1, 2012. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of July 1, 2011.

FOR FURTHER INFORMATION CONTACT: For information related to the provisions on high school diplomas and verification of information on the Free Application for Federal Student Aid (FAFSA), Jacquelyn Butler. Telephone: (202) 502–7890 or via the Internet at: *Jacquelyn.Butler@ed.gov.*

For information related to the return of title IV, HEA funds calculation provisions for term-based modules or taking attendance, Jessica Finkel or Wendy Macias. Telephone: (202) 502–7647 or via the Internet at: *Jessica.Finkel@ed.gov.* Telephone: (202) 502–7526 or via the Internet at: *Wendy.Macias@ed.gov.*

For information related to the provisions on retaking coursework, Vanessa Freeman. Telephone: (202) 502–7523 or via the Internet at: *Vanessa.Freeman@ed.gov.*

For information on the provisions related to incentive compensation, Marty Guthrie. Telephone: (202) 219–7031 or via the Internet at: *Marty.Guthrie@ed.gov.*

For information related to the provisions on satisfactory academic progress, Marty Guthrie or Marianna Deeken. Telephone: (202) 219–7031 or via the Internet at: *Marty.Guthrie@ed.gov.* Telephone: (206) 615–2583 or via the Internet at: *Marianna.Deeken@ed.gov.*

For information related to the provisions on ability to benefit, Dan Klock. Telephone: (202) 377–4026 or via the Internet at *Dan.Klock@ed.gov.*

For information related to gainful employment in a recognized occupation, John Kolotos. Telephone: (202) 502–7762 or via the Internet at: *John.Kolotos@ed.gov.*

For information related to the provisions for written agreements between institutions, Carney McCullough. Telephone: (202) 502–7639 or via the Internet at: *Carney.McCullough@ed.gov.*

For information related to the provisions on misrepresentation, Carney McCullough or Vanessa Freeman. Telephone: (202) 502–7639 or via the Internet at: *Carney.McCullough@ed.gov.* Telephone: (202) 502–7523 or via the Internet at: *Vanessa.Freeman@ed.gov.*

For information related to the provisions on timeliness and method of disbursement, Harold McCullough. Telephone: (202) 377–4030 or via the Internet at: *Harold.McCullough@ed.gov.*

For information related to the provisions related to the definition of credit hour, Fred Sellers. Telephone: (202) 502–7502 or via the Internet at: *Fred.Sellers@ed.gov.*

For information related to provisions on State authorization, Fred Sellers. Telephone: (202) 502–7502 or via the Internet at: *Fred.Sellers@ed.gov.*

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

Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to one of the contact persons listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: On June 18, 2010, the Secretary published a notice of proposed rulemaking (NPRM) for program integrity issues in the **Federal Register** (75 FR 34806).

In the preamble to the NPRM, the Secretary discussed on pages 34808 through 34848 the major regulations proposed in that document to strengthen and improve the administration of programs authorized under the HEA. These proposed regulations included the following:

- Requiring institutions to develop and follow procedures to evaluate the validity of a student's high school diploma if the institution or the Secretary has reason to believe that the diploma is not valid or was not obtained from an entity that provides secondary school education;
- Expanding eligibility for title IV, HEA program assistance to students who demonstrate they have the ability to benefit by satisfactorily completing six credits of college work, or the equivalent amounts of coursework, that are applicable toward a degree or certificate offered by an institution;
- Amending and adding definitions of terms related to ability to benefit testing, including "assessment center," "independent test administrator," "individual with a disability," "test," "test administrator," and "test publisher";
- Consolidating into a single regulatory provision the approval processes for ability to benefit tests developed by test publishers and States;
- Establishing requirements under which test publishers and States must provide descriptions of processes for identifying and handling test score abnormalities, ensuring the integrity of the testing environment, and certifying and decertifying test administrators;
- Requiring test publishers and States to describe any accommodations available for individuals with disabilities, as well as the process a test administrator would use to identify and report to the test publisher instances in which these accommodations were used;
- Revising the test approval procedures and criteria for ability to benefit tests, including procedures related to the approval of tests for speakers of foreign languages and individuals with disabilities;
- Revising the definitions and provisions that describe the activities that constitute substantial misrepresentation by an institution of the nature of its educational program, its financial charges, or the employability of its graduates;
- Removing the "safe harbor" provisions related to incentive compensation for any person or entity engaged in any student recruitment or admission activity, including making decisions regarding the award of title IV, HEA program assistance;
- Clarifying what is required for an institution of higher education, a

proprietary institution of higher education, and a postsecondary vocational institution to be considered legally authorized by the State;

- Defining a *credit hour* and establishing procedures that certain institutional accrediting agencies must have in place to determine whether an institution's assignment of a credit hour is acceptable;
- Modifying provisions to clarify whether and when an institution must award student financial assistance based on clock or credit hours and the standards for credit-to-clock-hour conversions;
- Modifying the provisions related to written arrangements between two or more eligible institutions that are owned or controlled by the same person or entity so that the percentage of the educational program that may be provided by the institution that does not grant the degree or certificate under the arrangement may not exceed 50 percent;
- Prohibiting written arrangements between an eligible institution and an ineligible institution that has had its certification to participate in title IV, HEA programs revoked or its application for recertification denied;
- Expanding provisions related to the information that an institution with a written arrangement must disclose to a student enrolled in a program affected by the arrangement, including, for example, the portion of the educational program that the institution that grants the degree or certificate is not providing;
- Revising the definition of *unsubsidized student financial aid programs* to include TEACH Grants, Federal PLUS Loans, and Direct PLUS Loans;
- Codifying current policy that an institution must complete verification before the institution may exercise its professional judgment authority;
- Eliminating the 30 percent verification cap;
- Retaining the ability of institutions to select additional applicants for verification;
- Replacing the five verification items for all selected applicants with a targeted selection from items included in an annual **Federal Register** notice published by the Secretary;
- Allowing interim disbursements when changes to an applicant's FAFSA information would not change the amount that the student would receive under a title IV, HEA program;
- Codifying the Department's IRS Data Retrieval System Process, which allows an applicant to import income and other data from the IRS into an online FAFSA;
- Requiring the processing of changes and corrections to an applicant's FAFSA information;
- Modifying the provisions related to institutional satisfactory academic progress policies and the impact these policies have on a student's eligibility for title IV, HEA program assistance;
- Expanding the definition of *full-time student* to allow, for a term-based program, repeated coursework taken in the program to count towards a full-time workload;
- Clarifying when a student is considered to have withdrawn from a payment period or period of enrollment for the purpose of calculating a return of title IV, HEA program funds;
- Clarifying the circumstances under which an institution is required to take attendance for the purpose of calculating a return of title IV, HEA program funds;
- Modifying the provisions for disbursing title IV, HEA program funds to ensure that certain students can obtain or purchase books and supplies by the seventh day of a payment period;
- Updating the definition of the term *recognized occupation* to reflect current usage;
- Establishing requirements for institutions to submit information on students who attend or complete programs that prepare students for gainful employment in recognized occupations; and
- Establishing requirements for institutions to disclose on their Web site and in promotional materials to prospective students, the on-time completion rate, placement rate, median loan debt, program cost, and other information for programs that prepare students for gainful employment in recognized occupations.

Implementation Date of These Regulations

Section 482(c) of the HEA requires that regulations affecting programs under title IV of the HEA be published in final form by November 1 prior to the start of the award year (July 1) to which they apply. However, that section also permits the Secretary to designate any regulation as one that an entity subject to the regulation may choose to implement earlier and to specify the conditions under which the entity may implement the provisions early.

The Secretary has not designated any of the provisions in these final regulations for early implementation. As indicated in the **DATES** section, the regulations contained in subpart E of part 668, Verification and Updating of Student Aid Application Information are effective July 1, 2012.

While the Secretary has designated amended § 600.9(a) and (b) as being effective July 1, 2011, we recognize that a State may be unable to provide appropriate State authorizations to its institutions by that date. We are providing that the institutions unable to obtain State authorization in that State may request a one-year extension of the effective date of these final regulations to July 1, 2012, and if necessary, an additional one-year extension of the effective date to July 1, 2013. To receive an extension of the effective date of amended § 600.9(a) and (b) for institutions in a State, an institution must obtain from the State an explanation of how a one-year extension will permit the State to modify its procedures to comply with amended § 600.9.

Analysis of Comments and Changes

The regulations in this document were developed through the use of negotiated rulemaking. Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under title IV of the HEA, the Secretary must obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. The negotiated rulemaking committee did not reach consensus on the proposed regulations that were published on June 18, 2010. The Secretary invited comments on the proposed regulations by August 2, 2010. Approximately 1,180 parties submitted comments, a number of which were substantially similar. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

We group major issues according to subject, with appropriate sections of the regulations referenced in parentheses. We discuss other substantive issues under the sections of the regulations to which they pertain. Generally, we do not address minor, nonsubstantive changes, recommended changes that the law does not authorize the Secretary to make, or comments pertaining to operational processes. We also do not address comments pertaining to issues that were not within the scope of the NPRM.

General Comments

Comment: We received a significant number of comments that expressed support for the Secretary's proposed regulations. Many of the commenters noted that the proposed regulations would protect taxpayer investments in

higher education by helping to curtail fraud and abuse and would protect the interests of a diverse population of students who are seeking higher education for personal and professional growth. Some of the commenters also stated that the Secretary's proposed regulations would provide a level playing field that benefits the majority of institutions of higher education that are committed to sound academic and administrative practices.

Discussion: The Department appreciates the numerous comments we received in support of the proposed regulations.

Changes: None.

Comment: Several commenters disagreed with the process by which the Department developed the proposed regulations. The commenters believe that the Department did not negotiate in good faith and did not follow faithfully the Federal negotiated rulemaking process. These commenters believed that the Department excluded important members of the proprietary school sector from the process and failed to provide adequate time for review of and comment on the proposed regulations. Because of the complexity of the proposed regulations, these same commenters also requested that the Department delay the effective date for implementation of the final regulations. Several other commenters believed that before negotiating proposed regulations with such a broad scope, the Department should have conducted studies to assess the impact the proposed regulations would have on affected institutions. Lastly, one commenter expressed the view that the Department began negotiations without presenting examples of abuse or data that supported additional regulation and that many of the Department's concerns about program integrity could have been better addressed by enforcing current regulations.

Discussion: We disagree with the commenters who said that the Department did not act in good faith in negotiating the proposed regulations or that we did not follow the negotiated rulemaking process. In conducting the negotiated rulemaking for these proposed regulations, the Department followed the requirements in section 492 of the HEA, which govern the negotiated rulemaking process and require the Department to choose non-Federal negotiators from the groups involved in the student financial assistance programs authorized by title IV of the HEA. As addressed earlier in this preamble, all of these groups were represented during the negotiations.

We believe that the 45-day public comment period was an adequate period of time for interested parties to submit comments, especially in light of the fact that prior to issuing the proposed regulations, the Department conducted public hearings and three negotiated rulemaking sessions, where stakeholders and members of the public had an opportunity to weigh in on the development of much of the language reflected in the proposed regulations. In addition, we believe that the 45-day public comment period is necessary in light of the HEA's master calendar requirements. Under those requirements, the Department must publish final regulations by November 1, 2010, in order for them to be effective on July 1, 2011. The Department must adhere to the master calendar set forth by Congress and does not have the statutory authority to amend it.

We also do not agree that, except for certain provisions of the regulations such as those that may involve systems changes that require adequate lead time to make, implementation of the final regulations should be delayed. For example, the proposed regulations on FAFSA verification cannot be implemented by the July 1, 2011 effective date because the changes would require system updates that will not be in place by that date. We discuss the implementation delay of regulations that involve these system changes elsewhere in this preamble. Absent these system-related or similar issues, however, we believe a delay in implementing the final regulations will undermine the Department's goal of protecting taxpayers and students by ensuring the integrity of the title IV, HEA programs.

Lastly, we disagree with the commenters who stated that the Department should have conducted a study to assess the impact of the proposed regulations on institutions of higher education before negotiating the proposed changes and those commenters who stated that the Department did not present examples of abuse or data to support the proposed regulations. The Department's decision to improve program integrity by strengthening the regulations was based on many factors, including feedback we received from the public. Specifically, the Department developed a list of proposed regulatory provisions based on advice and recommendations submitted by individuals and organizations as testimony in a series of three public hearings in June of 2009, as well as written comments submitted directly to the Department. Department staff also identified issues for discussion and negotiation. The proposed regulations that were negotiated during negotiated rulemaking and included in the proposed regulations were developed for one or more of the following reasons:

- To implement provisions of the HEA, as amended by the Higher Education Opportunity Act of 2008 (HEOA).
- To update current regulations that had not been updated in some time so that they more accurately reflect the state of the law as well as the Department's current practices and policies (*e.g.,* aligning the regulations with the Department's FAFSA simplification initiative).
- To respond to problems identified by students and financial aid advisors about the aggressive sales tactics used by some institutions.
- To respond to a report from the United States Government Accountability Office published in August of 2009 that raised concerns about proprietary institutions and recommended stronger Department oversight to ensure that only eligible students receive Federal student aid.

We believe that all of these factors provided ample support for the Department to immediately propose stronger regulations to protect students and prevent fraud and abuse in the title IV, HEA programs.

Changes: None.

Comment: Many commenters expressed concern about what they argued would be a negative impact of the proposed regulations on institutions of higher education, particularly proprietary institutions. These commenters stated that the proposed regulations are too complex and too broad in scope and that, as a result, they would disproportionately impose burdens on the institutions that serve many of the students who need the most financial assistance. Other commenters stated that, in these trying economic times, institutions simply do not have the resources to administer the disclosure, reporting, and implementation requirements included in the proposed regulations. Some of these commenters stated that they feared that the cost of compliance with these regulations, which many argued were ambiguous or inconsistent, would drive their small proprietary institutions out of business.

Several commenters stated that the proposed regulations target the entire proprietary school sector of higher education, while the actions of only a few proprietary institutions are cause for concern. These commenters decried the Department's "one-size-fits-all" approach to ensuring program integrity.

Lastly, one commenter requested that the Department indicate in each section of the final regulations the types of institutions to which that specific section applies.

Discussion: The Department is aware that some institutions may have limited resources to implement some provisions of the final regulations and is committed to assisting these institutions in every way possible to ensure that all institutions can comply with program requirements. Several of the changes are to discrete areas of existing regulations rather than wholly new requirements. As such, institutions wishing to continue to participate in the title IV, HEA programs have already absorbed many of the administrative costs related to implementing these final regulations. Any additional costs are primarily due to new procedures that, while possibly significant in some cases, are a cost of continued program participation.

The Department believes that the benefits of these regulations for students, consumers, and taxpayers justify the burdens of institutional compliance, as discussed, in the Regulatory Impact Analysis in Appendix A. These regulations strengthen the Federal student aid programs by protecting students from aggressive or misleading recruiting practices and clarifying State oversight responsibilities, providing consumers with better information about the effectiveness of career colleges and training programs, and ensuring that only eligible students or programs receive aid.

We do not believe it is necessary to specifically indicate in each section which institutions are covered by a particular regulation because all provisions of these regulations apply to all postsecondary institutions, unless otherwise specified.

Changes: None.

Comment: A number of commenters stated that the proposed regulations would harm students who are already disadvantaged, underserved, and not adequately represented in postsecondary institutions because they would limit their choice of educational programs and their chances of getting a quality education. Other commenters noted that the proposed regulations could become a barrier to access for needy students, as well as adult students who work full-time, because aid may be discontinued for programs that do not meet new regulatory requirements. Finally, one commenter urged the Department to ensure that the final regulations further the objectives of student access and success, and promote quality educational programs.

Discussion: We are confident that the regulations strengthening program integrity are in the best interest of students, consumers, and taxpayers, and will improve the quality of the programs offered at institutions by ensuring that all programs meet a threshold of quality. We believe that students, particularly disadvantaged, high-need students who are the most vulnerable, are not well served by enrollment in programs that leave them with limited or low-paying job prospects and with crushing debt that they are unable to repay. Students who complete their educational programs should not expect results that leave them in a worse situation than when they began their educational programs. We believe the regulations will hold institutions accountable and ensure that students can have confidence in the quality of the educational programs in which they invest their time, energy, and money. The Department has a fiscal responsibility to American taxpayers to ensure the value of education provided by all institutions and programs that are eligible for Federal student aid, regardless of whether they are public, private nonprofit, or proprietary institutions, and these regulations will aid the Department in achieving the best possible return on taxpayers' investment.

Changes: None.

Gainful Employment in a Recognized Occupation (§§ 600.2, 600.4, 600.5, 600.0, 668.6, and 668.8) Gainful Employment Reporting and Disclosure Requirements (§ 668.6)

General

Comment: Many commenters believed that the proposed reporting and disclosure requirements should apply to all programs, regardless of the type of institution or credential awarded, or whether the programs are otherwise subject to the gainful employment provisions. Alternatively, other commenters maintained that since these requirements were targeted to prevent known abuses in the for-profit sector, they should apply only to those institutions.

A number of commenters supported the proposed requirements and Web-based disclosure approach. Some of the commenters urged the Department to require institutions to provide the information under § 668.6(b) in a clear, prominent, user-friendly, and easily understood manner. The commenters also recommended that this information be given directly to prospective students prior to enrolling or making a verbal or written commitment to enroll. Other commenters made similar suggestions including making the information available in a prominent, clear, and conspicuous location in the first promotional materials conveyed to prospective students. Another commenter believed that disclosures could be helpful if they are offered early in the process and are clear and conspicuous. However, the commenter opined that there is virtually no evidence that disclosures impact consumer decision making in a meaningful way. The commenter further stated that the fiction that disclosures are sufficient to regulate markets is especially apparent for low-literate consumers, citing an example where a client was pressured to enroll in a medical assisting program at a for-profit institution even though she dropped out of school in the 9th grade and had a 6th grade reading level. The student did not complete the program, never found work, and defaulted on her loans. The commenter concluded that disclosures are not an adequate counterweight to school overreaching and are useful only in conjunction with substantive standards.

Discussion: As we noted in the NPRM for these regulations (75 FR 34808–34809), the reporting and disclosure requirements in § 668.6 apply only to programs that prepare students for gainful employment, as provided under sections 102(b) and (c) and 101(b)(1) of the HEA.

With regard to the comments on how an institution should disclose on its Web site the information required in § 668.6(b), and when it would be most beneficial to students to receive this information, we expect institutions to abide by the intent of the provisions—to enable students to make an informed choice about a program—by making the disclosures in a clear, timely, and meaningful manner. To this end, and to help ensure that the disclosures are easily accessible, an institution must prominently provide the required information on the home page of its program Web site and provide a prominent and direct link to this page on any other Web page about a program. The information displayed must be in an open format that can be retrieved, downloaded, indexed, and searched by commonly used Web search applications. An open format is one that is platform-independent, is machine-readable, and is made available to the public without restrictions that would impede the reuse of that information.

In addition, we agree with the suggestion that an institution should be required to make this information available in the promotional materials

conveyed to prospective students. To promote the goal of facilitating informed choice, the disclosure must be simple and meaningful.

The Department intends to develop in the future a disclosure form and will be seeking public comment about the design of the form through the information collection process under the Paperwork Reduction Act of 1995 (PRA). While the form will be developed through that process, the regulations require institutions to provide clear and prominent notice, delivered to students at appropriate times and in promotional materials prior to enrollment. Until a form is developed and approved under the PRA process, institutions must comply with these disclosure requirements independently. In addition, we agree with the comments that disclosures alone are likely to be inadequate and have proposed to establish program performance standards in our NPRM on Program Integrity—Gainful Employment that was published in the **Federal Register** on July 26, 2010 (75 FR 43616).

Changes: Section 668.6(b) has been revised to provide that an institution must prominently provide the information it is required to disclose about a program in a simple and meaningful manner on the home page of its program Web site, and provide prominent and direct links to this page on any other Web page containing general, academic, or admissions information about the program. The revised provision also states that an institution must use the disclosure form developed by the Secretary when it becomes available and the disclosure information must be displayed on the institution's Web site in an open format that can be retrieved, downloaded, indexed, and searched by commonly use Web search applications. An open format is one that is platform-independent, is machine-readable, and is made available to the public without restrictions that would impede the reuse of that information.

Finally, § 668.6(b) has been revised to provide that an institution must make the information available in the promotional materials conveyed to prospective students.

Placement Rates

Comment: Many commenters objected to using the placement rate calculation in § 668.8(g) arguing that it is overly burdensome and administratively complex. The commenters opined that tracking a student for 180 days after graduation for a period of 13 weeks was too long and believed that it would be virtually impossible for the Department or any other auditor to affirm the accuracy of the placement data because the tracking period represents nothing more than a snap-shot of how many students were employed for 13 weeks at the time the data was collected. The commenters asserted that if the Department requires placement information to be disclosed to students, the information that an institution currently provides to its accrediting agency, which routinely assesses that information, would be more accurate. In addition, the commenters were concerned about potential conflicts with the misrepresentation provisions in subpart F of part 668 on the grounds that any placement rate disclosed to students would be obsolete as soon as it was posted to an institution's Web site. Some of the same commenters objected to the proposed alternative of relying on State-sponsored workforce data systems arguing that there is no consistency between the States that maintain employment outcome data, and that in many cases the data collected fails to provide a full and accurate depiction of the demand, growth, and earnings of key occupations.

A number of commenters opposed using the placement rate calculation in § 668.8(g) arguing that it is a highly restrictive measure developed solely for extremely short programs offered by a few institutions. The commenters noted that an institution is already required under § 668.41(d)(5) to disclose any placement rates it calculates and that it would be confusing to students to disclose any additional rates beyond those that it is required to calculate under accrediting agency or State requirements. Some of these commenters suggested that in cases where an institution is not required by its accrediting agency to calculate placement rates, the institution should calculate the rates using a methodology from a national accrediting agency or the State in which the institution is authorized to operate. Under either the agency or State methodology, the commenters requested flexibility in determining the rates for degree programs because employment opportunities for graduates of degree programs are much more diverse than for graduates of occupationally specific training programs.

One commenter stated that its institution's mission of educating working adults is at odds with the concept of placement rates—many of the institution's students are already employed and enroll to enhance their careers through further education. In addition, the commenter stated that it would be impractical to administer a job placement regime for students taking online programs who reside throughout the world. The commenter recommended that placement rates be calculated in accordance with an institution's accrediting agency or State requirements, but that the proposed disclosures should not apply where there are no agency or State requirements. As an alternative, the commenter suggested that regionally accredited institutions, which are not required to track employment outcomes, conduct post graduation surveys asking program graduates if they are working in their field. An affirmative response would count as a "placement" even if the graduate maintained the same employment he or she had while attending the institution. Along the same lines, another commenter suggested that the Department allow an institution that is not required by an outside agency to calculate placement rates, to develop and implement a method that best reflects the make-up of its student body, including surveys, collecting employer documentation, or other methods.

One commenter objected to using the placement rate calculation intended for short-term programs in § 668.8(g) because all of its programs were at or above the baccalaureate level. While the commenter stated that requiring public disclosure of relevant outcomes puts pressure on an institution to ensure that it is providing a good education to its students, the commenter suggested that unless an institution's accrediting agency or State requires it to disclose placement rates, the institution should only disclose rates that it calculates on an annual basis for internal purposes or any employment or placement information it receives from surveying its students. Another commenter made the same suggestions and asked the Department to clarify that placement rates would only need to be updated annually.

Another commenter argued that the placement rate methodology in § 668.8(g) was never intended for gainful employment purposes and made several recommendations including:

(1) Excluding from the total number of students who completed a program during an award year, the students who are unable to seek employment due to a medical condition, active military duty, international status, continuing education, incarceration, or death. In addition, an institution could exclude those graduates who certify they are not seeking employment or those that it is unable to locate. The commenter specified the documentation an

institution would have to obtain for each of these exclusions.

(2) Removing the requirement in § 668.8(g)(1)(iii) that a student must be employed, or have been employed, for 13 weeks and allowing students to find employment within 6 months from the last graduation date in the award year.

(3) Replacing the employer certification, income tax form, and Social Security provisions in § 668.8(g)(3) with other ways that an institution would verify that a student obtained gainful employment.

Several commenters suggested using the methodology developed by a national accrediting agency because the proposed method in § 668.8(g) does not take into consideration circumstances that would prevent graduates from seeking employment, such as health issues, military deployment or continuing education, or practical issues related to the employment of international or foreign students.

Several commenters stated it would be difficult, if not impossible, for these institutions to obtain the data needed to calculate placement rates. Some of these commenters supported the use of State-sponsored workforce data systems, but cautioned that many community colleges would not be able to obtain sufficiently detailed placement information through data matches with these systems to satisfy the proposed requirements. Other commenters noted that some States do not have workforce data systems, so institutions in those States would have to use the non preferred placement rate methodology under § 668.8(g). Many of the commenters believed the requirement to document employment on a case-by-case basis under § 668.8(g)(2) would be overly burdensome and labor intensive. Others opined that the placement provisions are counterproductive, claiming that a substantial number of community colleges eschewed participating in programs under the Workforce Investment Act because of placement rate requirements. On the other hand, another commenter supported the placement rate provisions and recommended that all institutions in a State participate in a workforce data system, if the State has one. The commenter asked the Department to clarify how the data obtained from a workforce data system would be used to meet the placement rate requirements and the timeline for reporting those rates. In addition, the commenter suggested revising the placement rate provisions in § 668.8(g) to more closely align those provisions with practices used by State data systems.

One commenter stated that in order to receive Federal funding under the Carl D. Perkins Career and Technical Education Act, a program must receive State approval that entails a review of documentation requiring that the program be high demand, high wage or in an emerging field. As part of the State review, the institution provides documentation of potential placement. The commenter recommended that the Department waive the gainful employment provisions for all certificate programs approved by the State under this review process.

A commenter supported disclosing placement rate data, but noted that the institution would only be able to report on graduates who are employed in the State or continued their education. The institution would not be able to provide occupationally specific placement data, or data about graduates who find employment outside the State, because the State's labor data base only tracks (1) the type of business a graduate is employed by, not the occupation of the graduate, and (2) graduates who are employed in the State.

Several other commenters supported the proposed placement rate disclosures, but believed that the provisions in § 668.8(g) were inadequate. The commenters made several suggestions, including:

(1) Expanding the category of students who complete a program (currently in § 668.8(g)(1)(i)) to include students who are eligible for a degree or certificate. The commenters stated they are aware of institutions that delay providing the degree or certificate to students, which omits these students from the placement rate calculation.

(2) Specifying that the time standards in § 668.8(g) (employment within 180 days of completing a program and employment for 13 weeks) also apply to rates calculated from State workforce data systems.

(3) Specifying that employment must be paid. The commenters stated they are aware of institutions that have counted students in unpaid internships as being employed.

(4) To be counted in the placement rate, providing that a student must find employment in one of the SOC codes identified for the program unless the student finds a job that pays more than any of the identified SOC codes. The commenters believed that some institutions stretch the concept of a "related" comparable job as currently provided in § 668.8(g)(1)(ii). For example, an institution might include any job at a hospital, including the lowest paying jobs, when the student was trained for a skilled job such as an x-ray technician. The higher earnings recommendation would condition a successful placement but allow an institution to count a student employed in an unrelated SOC.

(5) To address the situation where a student cannot qualify for employment until he or she passes a licensing or certification examination, providing that the 180-day period during which the student would otherwise have to find employment should start after the results of the examination are available.

(6) To be counted in the placement rate, specifying that a student must work for at least 32 hours per week. The commenters stated that they are aware of institutions that include as successful placements any student that works at any time during a week, even if it is only for a few hours per week.

(7) Specifying that institutions must use a State data system if it is available to ensure accurate reporting.

(8) If the institution chooses to demonstrate placement rates by salary, providing that documentation must include signed copies of tax returns, W–4s or paystubs to document earnings.

(9) To more thoroughly substantiate placement rates, requiring the auditor who performs the institution's compliance audit under § 668.23 to directly contact former students and employers whose statements were obtained by the institution.

Discussion: We are persuaded by the comments that using the methodology in § 668.8(g) may not be the most appropriate method for determining the placement rate for the majority of the programs that are subject to the gainful employment provisions. Moreover, in view of the varied suggestions for how the rate should be calculated, documented, and verified, in early 2011 we will begin the process for developing the method to calculate placement rates for institutions through the National Center for Education Statistics (NCES). These final regulations establish some reporting requirements using existing placement data as explained below, with a transition in a later period for institutions to disclose placement rates obtained from the NCES methodology. NCES will develop a placement rate methodology and the processes necessary for determining and documenting student employment and reporting placement data to the Department using the Integrated Postsecondary Education Data System (IPEDS).

NCES employs a collaborative process that affords the public significant opportunities to participate in making, and commenting on, potential changes to IPEDS. Potential changes are

examined by the IPEDS Technical Review Panel (TRP), which is a peer review panel that includes individuals representing institutions, education associations, data users, State governments, the Federal government, and other groups. The TRP meets to discuss and review IPEDS-related plans and looks at the feasibility and timing of the collection of proposed new items, added institutional burden, and possible implementation strategies. After each meeting, a meeting report and suggestions summary is posted to the IPEDS Web site. The postsecondary education community then has 30 days to submit comments on the meeting report and summary. After those comments are considered, the Department requests the Office of Management and Budget (OMB) to include the changes in the next IPEDS data collection. This request for forms clearance is required by the Paperwork Reduction Act of 1995, as amended. A description of the changes and the associated institutional reporting burden is included in the request which is then published by OMB as a notice in the **Federal Register**, initiating a 60-day public comment period. After that, a second notice is published in the **Federal Register**, initiating a 30-day public comment period. Issues raised by commenters are resolved, and then OMB determines whether to grant forms clearance. Only OMB cleared items are added to the IPEDS data collection.

Although we agree with the commenters that the data maintained or processes used by workforce data systems may vary State by State, and that the data systems are not available to all institutions or in all States, we continue to believe that these data systems afford participating institutions an efficient and accurate way of obtaining employment outcome information. However, because of State-to-State variances and in response to comments about how employment outcome data translate to a placement rate, NCES will develop the methods needed to use State employment data to calculate placement rates under its deliberative process for IPEDS.

Until the IPEDS-developed placement rate methodology is implemented, an institution that is required by its accrediting agency or State to calculate a placement rate, or that otherwise calculates a placement rate, must disclose that rate under the current provisions in § 668.41(d)(5). However, under new § 668.6(b), the institution must disclose on its Web site and promotional materials the placement rate for each program that is subject to the gainful employment provisions if that information is available or can be determined from institutional placement rate calculations. Consequently, to satisfy the new disclosure requirements, an institution that calculates a placement rate for one or more programs would disclose that rate under § 668.6(b) by identifying the accrediting agency or State agency under whose requirements the rate was calculated. Otherwise, if an accrediting agency or State requires an institution to calculate a placement rate only at the institutional level, the institution must use the agency or State methodology to calculate the placement rate for each of its programs from information it already collects and must disclose the program-specific placement rates in accordance with § 668.6(b).

Changes: Section 668.6(b) has been revised to specify that an institution must disclose for each program the placement rate calculated under a methodology developed by its accrediting agency, State, or the National Center for Education Statistics (NCES). The institution must disclose the accrediting agency or State-required placement rate beginning on July 1, 2011 and must identify the accrediting agency or State agency under whose requirements the rate was calculated. The NCES-developed placement rate would have to be disclosed when the rates become available.

On-Time Completion Rate

Comment: Many commenters asked the Department to clarify the meaning of "on-time" completion rate. Other commenters assumed that "on-time" completion referred to the graduation rate currently calculated under the Student Right to Know requirements in § 668.45, or encouraged the Department to either (1) adopt the current requirements in § 668.45 for gainful employment purposes, or (2) use a completion rate methodology from an accrediting agency or State, to minimize confusion among students and burden on institutions. One of the commenters suggested that if the Department intended "on-time" to mean 100 percent of normal time for completion, then the proposed rate should be calculated in the same manner as the completion rate in § 668.45 for normal time and incorporate the exclusions for students transferring out of programs and other exceptions identified in § 668.45(c) and (d). Another commenter opined that absent significant enforcement to ensure that all institutions consistently use the same definition of "on-time" completion rate, students will be unfairly led to believe that institutions who report conservatively have less favorable outcomes than institutions who report aggressively. One commenter cautioned that it may be misleading to focus heavily on graduation and placement rates, particularly for institutions whose students are employed while seeking a degree.

A number of commenters supported the "on-time" completion requirement, and in general all of the proposed disclosures, stating that providing outcome data would allow prospective students to make more informed decisions. The commenters believed that better outcome data will help to ensure that the taxpayer investment is well spent, and that students are protected from programs that overcharge and under-deliver.

A commenter stated that under State licensing requirements for cosmetology schools a student must be present, typically for 1,500 hours, to qualify for graduation and to complete the program. Taking attendance and ensuring that a student is present for these hours is typically required. The commenter reasoned that for a student to complete the program "on-time" the student could not miss a single day or even be late for classes as opposed to a credit hour program where a student does not have to attend classes 100 percent of the time but will still be considered to satisfy the on-time requirement. To mitigate the difference between clock and credit hour programs and account for legitimate circumstances where a student would miss classes, the commenter suggested that the standard for "on-time" incorporate the concept of a maximum timeframe under the satisfactory academic progress provisions that allow a student to complete a program at a specified rate.

Discussion: In proposing the on-time completion rate requirement, the Department intended to include all students who started a program to determine the portion of those students who completed the program no later than its published length. This approach differed significantly in two ways from the completion rate under the Student Right to Know (SRK) provisions in § 668.45. First, in calculating the completion rate the SRK methodology includes in the cohort only full-time, first-time undergraduate students, not all students. Second, the SRK rate is based on 150 percent of normal time, not the actual length of the program. However, in view of the comments suggesting that we use the SRK methodology, or a modified version, we examined whether the cohort of students under SRK could be expanded to include all students and from that,

whether a completion rate could be calculated based on normal time, as defined in § 668.41(a). We concluded that doing this would be difficult and too complex for institutions and the Department.

We believe prospective students should know the extent to which former students completed a program on time, not only to ground their expectations but to plan for the time they will likely be attending the program—an important consideration for many students who cannot afford to continue their education without earnings from employment. Therefore, to minimize burden on institutions while providing meaningful information to prospective students, an institution must calculate an on-time completion rate for each program subject to the gainful employment provisions by:

(1) Determining the number of students who completed the program during the most recently completed award year.

(2) Determining the number of students in step (1) who completed the program within normal time, regardless of whether the students transferred into the program or changed programs at the institution. For example, the normal time to complete an associate degree is two years. The two-year timeframe would apply to all students who enroll in the program. In other words, if a student transfers into the program, regardless of the number of credits the institution accepts from the student's attendance at the prior institution, the transfer credits have no bearing on the two-year timeframe. This student would still have two years to complete from the date he or she began attending the two-year program. To be counted as completing on time, a student who enrolls in the two-year program from another program at the institution would have to complete the two-year program in normal time beginning from the date the student started attending the prior program.

(3) Dividing the number of students who completed within normal time in step (2) by the total number of completers in step (1) and multiplying by 100.

With regard to the commenter who believed that a student could not miss a single day of classes to complete a program on time, we note that under § 668.4(e) a student can be excused from attending classes. Under this section, a student may be excused for an amount of time that does not exceed the lesser of (1) any thresholds established by the institution's accrediting agency or State agency, or (2) 10 percent of the clock hours in a payment period. Absent any State or accrediting agency requirements, for a typical payment period of 450 clock hours a student could miss 45 hours. In the commenter's example of a 1,500 clock hour program, the student could miss 150 hours and still complete on time for this requirement. Also, under § 668.41(a), normal time for a certificate program is the time published in the institution's catalog and that time may include make-up days. So, an institution could schedule make-up days, as part of normal time, to enable students who missed classes to complete the number of hours required for State licensing purposes.

Changes: Section 668.6(b) has been revised to specify how an institution calculates an on-time completion rate for its programs.

Median Loan Debt

Comment: Many commenters objected strongly to the requirement in proposed § 668.6(a)(4) that an institution report annually to the Department, for each student attending a program that leads to gainful employment, the amount each student received from private education loans and institutional financing plans.

With regard to private education loans taken out by students, the commenters argued that because the loans are self-certified, in many cases an institution is not aware of the loans and should only have to report the amount of the private loans it knows about or the amount of those loans that were paid directly to the institution. Commenters representing students and consumer advocacy groups contended that most institutions have preferred lender lists, help students arrange private loans, recommend a lender, receive student payments from a lender, or otherwise have information about the lender. Consequently, to clarify that an institution cannot avoid reporting on private loans by feigned ignorance, the commenters suggested that an institution report any private loan it knows about or should reasonably know about. To clarify the meaning of "private education loan" one commenter suggested that the Department reference the definition in § 601.2.

With regard to institutional financing plans, many commenters, argued that an institution should only be required to report the amount of any remaining institutional loans or debt obligations owed by a student after he or she completes the program, not the amount of the loan or credit extended to the student at the start of, or during, the program.

Many commenters asked the Department to clarify whether median loan debt would include only loan debt incurred by students who completed a particular program or loan debt incurred from previously attended programs or institutions. Some of the commenters argued that it would be difficult to determine the relevant loan debt of students who enroll in postbaccalaureate certificate programs and end up concurrently pursuing an associated master's degree. The commenters argued that extracting the portion of debt that applies to the certificate would be difficult, but reporting based on the total debt accumulated during the graduate-level enrollment period would overstate the amount borrowed if the intent was to report on the certificate program. They also believed that an institution would have to track loan debt pertaining to credits accepted for a program that were not necessarily earned by students who continue in a graduate program, including transfer credits accepted from other institutions. In addition, the commenters believed that for any undergraduate work that "transfers up," the portion of the loan debt from that period would have to be identified. In view of these complexities and considering that two-year transfer programs are excluded from the reporting requirements, the commenters requested a similar exclusion for graduate certificate programs where the credits apply directly to a graduate degree. Along the same lines, other commenters requested that postbaccalaureate certificate programs or courses such as a certification as a school principal, district superintendent, or director of instruction be exempted from these regulations.

A commenter requested an exemption for four-year degree-granting institutions stating that such institutions only have a handful of certificate programs that would be of no concern to the Department.

A few commenters believed that institutions should either (1) be allowed to disclose separately the amount of loan debt students accumulate for institutional charges and the amount incurred for living expenses, or (2) not be required to disclose loan debt incurred for living expenses because that debt is incurred at the student's discretion and not be required to disclose loan debt incurred by a student at prior, unrelated institutions.

Other commenters urged the Department to use the mean instead of the median loan debt arguing that using median debt would unjustly penalize students attending institutions with larger numbers of borrowers by

providing a competitive advantage to institutions with smaller populations of student loan borrowers.

Many commenters supported the proposed requirement for disclosing the median debt of students who complete a program, but suggested that institutions should also disclose the median debt of noncompleters. The commenters stated that it was one thing for students to be told that 40 percent graduate with $20,000 in loan debt, but it's another for them to understand that the majority of students who don't complete have $15,000 in loan debt they would have to repay. The commenters believed that separating the disclosures by completers and noncompleters would enable better comparisons between programs, and would not create the appearance of low median debt for programs with low completion rates. In addition, to minimize burden the commenters suggested that collecting the data needed to calculate the median loan debt could appropriately be limited to programs in which a significant share of students borrow. According to the commenters, this approach would ensure that potential students and the Department know when a program has high student borrowing rates and low completion rates.

Discussion: We agree with the commenters that the debt an institution reports under § 668.6(a)(4) for institutional financing plans is the amount a student is obligated to repay upon completing the program. Under this same section, an institution must also report the amount of any private education loans it knows that students received.

The HEOA amended both the HEA and the Truth-in-Lending Act (TILA) to require significant new disclosures for borrowers of private education loans. The HEOA also requires private education lenders to obtain a private loan self-certification form from every borrower of such a loan before the lender may disburse the private education loan.

Although the term "private education lender" is defined in the TILA, the Federal Reserve Board considers an entity to be a private education lender, including an institution of higher education, if it meets the definition of "creditor." The term "creditor" is defined by the Federal Reserve Board in 12 CFR 226.2(a)(17) as a person who regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments (not including a down payment), and to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract. A person regularly extends consumer credit only if it extended credit more than 25 times (or more than 5 times for transactions secured by a dwelling) in the preceding calendar year. If a person did not meet these numerical standards in the preceding calendar year, the numerical standards must be applied to the current calendar year.

The term *private education loan* is defined in 12 CFR 226.46(b)(5) as an extension of credit that:

- Is not made, insured, or guaranteed under title IV of the HEA;
- Is extended to a consumer expressly, in whole or in part, for postsecondary educational expenses, regardless of whether the loan is provided by the educational institution that the student attends;
- Does not include open-end credit or any loan that is secured by real property or a dwelling; and
- Does not include an extension of credit in which the covered educational institution is the creditor if (1) the term of the extension of credit is 90 days or less (short-term emergency loans) or (2) an interest rate will not be applied to the credit balance and the term of the extension of credit is one year or less, even if the credit is payable in more than four installments (institutional billing plans).

Examples of private education loans include, but are not limited to, loans made expressly for educational expenses by financial institutions, credit unions, institutions of higher education or their affiliates, States and localities, and guarantee agencies.

As noted previously, the HEOA requires that before a creditor may consummate a private education loan, it must obtain a self-certification form from the borrower. The Department, in consultation with the Federal Reserve Board, developed and disseminated the private loan self-certification form in Dear Colleague Letter GEN 10–01 published in February of 2010.

The Department's regulations in 34 CFR 601.11(d), published on October 28, 2009, require an institution to provide the self-certification form and the information needed to complete the form upon an enrolled or admitted student applicant's request. An institution must provide the private loan self-certification form to the borrower even if the institution already certifies the loan directly to the private education lender as part of an existing process. An institution must also provide the self-certification form to a private education loan borrower if the institution itself is the creditor. Once the private loan self-certification form and the information needed to complete the form are disseminated by the institution, there is no requirement that the institution track the status of a borrower's private education loan.

The Federal Reserve Board, in 12 CFR 226.48, built some flexibility into the process of obtaining the self-certification form for a private education lender. The private education lender may receive the form directly from the consumer, the private education lender may receive the form from the consumer through the institution of higher education, or the lender may provide the form, and the information the consumer will require to complete the form, directly to the borrower. However, in all cases the information needed to complete the form, whether obtained by the borrower or by the private education lender, must come directly from the institution.

Thus, even though an institution is not required to track the status of its student borrowers' private education loans, the institution will know about all the private education loans a student borrower receives, with the exception of direct-to-consumer private education loans, because most private education loans are packaged and disbursed through the institution's financial aid office. The institution must report these loans under § 668.6(a)(4). Direct-to-consumer private education loans are disbursed directly to a borrower, not to the school. An institution is not involved in a certification process for this type of loan.

We wish to make clear that any loan, extension of credit, payment plan, or other financing mechanism that would otherwise not be considered a private education loan but that results in a debt obligation that a student must pay to an institution after completing a program, is considered a loan debt arising from an institutional financing plan and must be reported as such under § 668.6(a)(4).

The Department will use the debt reported for institutional financing plans and private education loans along with any FFEL or Direct Loan debt from NSLDS that was incurred by students who completed a program to determine the median loan debt for the program. In general, median loan debt for a program at an institution does not include debt incurred by students who attended a prior institution, unless the prior and current institutions are under common ownership or control, or are otherwise related entities. In cases where a student changes programs while attending an institution or matriculates to a higher credentialed program at the institution, the Department will associate the total

amount of debt incurred by the student to the program the student completed. So, in the commenter's example where a student enrolls in a postbaccalaureate certificate program and is concurrently pursuing a master's degree, the debt the student incurs for the certificate program would be included as part of the debt the student incurs for completing the program leading to a master's degree. If the student does not complete the master's degree program, but completes the certificate program, then only the debt incurred by the student for the certificate program would be used in determining the certificate program's median loan debt.

The Department will provide the median loan debt to an institution for each of its programs, along with the median loan debt identified separately for FFEL and Direct Loans, and for private education loans and institutional financing plans. The institution would then disclose these debt amounts, as well as any other information the Department provides to the institution about its gainful employment programs, on its Web site and in its promotional materials to satisfy the requirements in § 668.6(b)(5).

While we generally agree with the suggestion that disclosing the median loan debt for students who do not complete a program may be helpful to prospective students, determining when or whether students do not complete is problematic for many programs even for students who withdraw or stop attending during a payment period—those students may return the following payment period. Because further review and analysis are needed before we could propose a requirement along these lines, institutions will need to report the CIP code for every student who attends a program subject to the gainful employment provisions and the total number of students who are enrolled in each of its programs at the end of an award year.

In cases where a student matriculates from one program to a higher credentialed program at the same institution, the Department will associate all the loan debt incurred by the student at the institution to the highest credentialed program completed by the student. To do this, the institution must inform the Department that even though a student completed a program, the student is continuing his or her education at the institution in another program. We wish to make clear that an institution would still need to provide the information under § 668.6(a) about each program the student completes. The Department will include the student's loan debt in calculating the median loan debt for the program the student most recently completed, or delay including the student's associated loan debt in calculating the median loan debt for the higher credentialed program. The Department will include the student's associated debt for the higher credentialed program when the student completes that program. If the student does not complete the higher credentialed program, then only the loan debt incurred by the student for completing the first program would be used in calculating the median loan debt for the first program.

Similarly, in cases where a student transfers from school A to school B, the Department will delay including the loan debt incurred by a student attending a program at school A pending the student's success at school B. If the student completes a higher credentialed program at school B, the median loan debt for that program includes only the student's loan debt incurred at school B. If the student does not complete the program at school B, then only the student's loan debt incurred for completing the program at school A is included in calculating the median loan debt for the program at school A. In other words, a student who completes a program and continues his or her education at the same institution or at another institution is considered to be in an in-school status and we will delay using the student's loan debt until the student completes a higher credentialed program or stops attending. The following chart and discussion illustrate this process.

School A		School B					
Student		Loan debt			Loan debt		
	Certificate	$3,000	Completed	Degree	$4,000	Completed	Gainful Employment Program?
1			Yes			Yes	Yes.
2			Yes			No	Yes.
3			Yes			Yes	No.
Same School							
4			Yes			Yes	Yes.
5			Yes			No	Yes.
6			Yes			Yes	No.

Student 1. Student is in an in-school status until the degree program is completed at School B. School A and B would report loan debt for each of their programs. Only the $4,000 debt incurred by the student at School B would be included in the median loan debt calculation for the degree program (highest credential completed). The student's loan debt at School A would not be included in calculating the median loan debt for the certificate program.

Student 2. Student is in an in-school status while attending School B, but does not complete the degree program. Only the $3,000 debt incurred by the student at School A would be included in the median loan debt calculation for the certificate program. The student's loan debt at School B would not be included in calculating the median loan debt for the degree program because the student did not complete that program.

Student 3. Student is in an in-school status while attending School B, but the degree program at School B is not subject to the gainful employment provisions. When the student completes the degree program, none of the student's debt would be included in the median loan debt calculation for the certificate program and no calculation would be performed for the degree program because it is not subject to the gainful employment provisions.

Student 4. Student is in an in-school status until the degree program is completed. All of the student's debt at

the school is associated to the degree program and included in the median loan debt calculation for the degree program. None of the student's debt is included in calculating the median loan debt of the certificate program.

Student 5. Student is in an in-school status while attending the degree program, but does not complete that program. Only the $3,000 debt incurred by the student for completing the certificate program would be included in the median loan debt calculation for that program. None of the student's debt would be included in the median loan debt calculation for the degree program because the student did not complete that program.

Student 6. Student is in an in-school status while attending the degree program, but the degree program is not subject to the gainful employment provisions. When the student completes the degree program, none of the student's debt would be included in the median loan debt calculation for the certificate program and no calculation would be performed for the degree program because it is not subject to the gainful employment provisions.

The Department disagrees with the suggestions that an institution should not be required to disclose loan debt incurred by students for living expenses because many students cannot afford to enroll in a program without borrowing to pay for living expenses and other education-related costs. Identifying only a portion of the loan debt that a student is likely to incur not only defeats the purpose of the disclosure but also may be misleading. With respect to the comments that loan debt related to living expenses should be disclosed separately from loan debt tied directly to institutional charges, we are concerned about how institutions would make or portray these disclosures and believe that separating the debt amounts would be confusing to prospective students.

We find little merit in the argument that using median loan debt, instead of mean loan debt, would provide a competitive advantage to institutions with fewer student loan borrowers. Assuming that an institution with fewer borrowers has the same enrollment as an institution with a large number of borrowers, then regardless of whether the mean or the median is used, the loan debt will be lower for an institution with fewer borrowers because all of the students who do not borrow would reduce its mean or median loan debt.

When these regulations take effect on July 1, 2011, the Department will require institutions to report no later than October 1, 2011 the information described in § 668.6(a) for the 2006–07, 2007–08, and 2008–09 award years. In accordance with the record retention requirements under § 668.24(e), most institutions should have the required information. We note that many institutions may have an existing practice of keeping student records for longer periods, or do so for State or accrediting purposes. If an institution has the records for the earlier periods, it must report the information described in § 668.6(a). Institutions that are not otherwise required to maintain the information for the 2006–07 award year described in § 668.6(a) at the time this regulation goes into effect on July 1, 2011, should consider doing so for their own purposes. In any case, if an institution is unable to report all or some the required information, it must provide an explanation of why the missing information is not available.

Changes: Section 668.6(a) has been revised to provide that in accordance with procedures established by the Secretary, an institution must provide (1) information for the award year beginning on July 1, 2006 and subsequent award years, (2) information about whether a student matriculated to a higher credentialed program at the institution, (3) if it has evidence, information that a student transferred to a higher credentialed program at another institution, and (4) if the institution is unable to report required information, an explanation of why the missing information is not available.

Student Information Database

Comment: Several commenters questioned the Department's ability to collect data under section 134 of the HEA which prohibits the Department from developing, implementing, or maintaining a Federal database of personally identifiable information. The commenters claimed that obtaining identifying information on program completers by CIP code and program completion date would constitute a violation of section 134 of the HEA. Some of the commenters suggested that institutions provide only aggregate information for individuals by CIP code and opined that the completion date was not necessary and should be removed. These commenters reasoned that the Department should use existing information, such as enrollment and loan repayment data in NSLDS and in any other systems, to determine when students are enrolled or have completed their program. Another commenter cited section 134 of the HEA as a reason why an institution should not be required to provide information on private or institutional loans.

Because section 134 of the HEA exempts existing systems that are needed to operate the student aid programs, some commenters asked the Department to clarify which current systems would be used to gather the information requested under proposed § 668.6(a). Several of the commenters did not believe that institutions should have to collect and report information for students who completed their programs in the past three years and requested that the information be prospective (students who begin attending a program after July 1, 2011).

Discussion: Section 134 of the HEA places restrictions on the Department's ability to develop, implement, or maintain a new database of personally identifiable information about individuals attending institutions and receiving title IV, HEA program funds, including systems that track individual students over time. It does not prohibit the Department from including such information in an existing system that is necessary for the operation of the Federal student aid programs. In this case, the information being reported is already a part of the information that is maintained by institutions in their student financial aid and academic records, and is subject to compliance and program reviews. Institutions reporting that students have started or completed a program for which those students received title IV, HEA program funds will augment the existing information in the Department's systems that are used to monitor and maintain the operations for the title IV, HEA programs. The information is also being compiled to create aggregate information to evaluate whether a program demonstrates that it leads to gainful employment for its students, rather than to monitor the individual students attending those programs over time. For those reasons, the reporting and use of this information is not prohibited under the law.

Changes: None.

*Links to O*Net*

Comment: Several commenters agreed it was important to inform students and the public about possible job opportunities that could result from enrolling in a program, but were concerned that the proposed requirement would not serve to accurately inform students. Some of the commenters believed that the proposed requirements might work for some programs like teaching and nursing. However, for graduate-level programs, like MBAs and PhDs in Psychology, institutions would be required to provide an unwieldy amount of data.

For example, it would be impossible for an institution to identify and disclose the full range and number of job opportunities that might exist for MBA graduates. As an alternative, the commenters suggested that the Department require schools to disclose the types of employment found by their graduates in the preceding three years. Other commenters had similar concerns and suggested that instead of disclosing all occupations by name and SOC code, the Department should allow an institution to disclose a sampling or representative set of links for the occupations stemming from its programs. Otherwise, the commenters were concerned that an institution would run afoul of the misrepresentation provisions unless it fully and completely listed all of the SOC and O*NET codes related to each program offered at the institution. Another commenter suggested that an institution should only list those occupations in which a majority of its program completers were placed.

A commenter claimed that it would be confusing and misleading to provide information on hundreds of jobs. To illustrate this point, the commenter stated that entering a CIP code of 52 for "Business, Management, Marketing and Related Support Services" would lead to 86 codes representing more than 300 occupational profiles. To avoid confusing students, the commenter suggested that an institution provide links only to those careers where its students have typically found employment.

One commenter thought that the link to O*Net was unnecessary because students could use search engines to research potential jobs.

Another commenter supported the O*NET disclosures because the additional administrative burden was not significant and the change was long overdue.

Discussion: In general, we do not believe that the links to O*NET will lead to an unwieldy amount of information when the full 6-digit CIP code is entered on the SOC crosswalk at *http://online.onetcenter.org/crosswalk/*. For example, entering the full 6 digit CIP code, 52.9999, for Business, Management, Marketing and Related Support Services, identifies only nine related occupations (SOCs). As shown below, it is these links to, and the names of, the nine occupations that an institution must post on its Web site.

52.9999 Business, Management, Marketing, & Related Support Services, Other
11–9151.00 Social and Community Service Managers
11–9199.00 Managers, All Other
13–1199.00 Business Operations Specialists, All Other
41–1011.00 First-Line Supervisors/Managers of Retail Sales Workers
41–1012.00 First-Line Supervisors/Managers of Non-Retail Sales Workers
41–3099.00 Sales Representatives, Services, All Other
41–4011.00 Sales Representatives, Wholesale and Manufacturing, Technical and Scientific Products
41–4012.00 Sales Representatives, Wholesale and Manufacturing, Except Technical and Scientific Products
41–9099.00 Sales and Related Workers, All Other

However, for 6-digit CIP codes that yield more than ten occupations, an institution may, in lieu of providing links to all the identified SOCs, provide links to a representative sample of the SOCs for which its graduates typically find employment within a few years after completing a program.

Changes: Section 668.6(b) has been revised to allow an institution to provide prospective students with Web links to a representative sample of the SOCs for which its graduates typically find employment within a few years after completing the program.

Disclosing Program Costs

Comment: Many commenters supported the proposal to disclose program costs. The commenters lauded this information as more useful to students than disclosing costs by credit hour or by semester and several commenters encouraged the Department to make this section of the regulations effective as soon as possible.

Some commenters indicated that the program costs in proposed § 668.6(b)(2) differ from the costs an institution makes available under § 668.43(g). The commenters suggested that all costs that a student may incur should be disclosed including charges for full-time and part-time students, estimates of costs for necessary books and supplies as well as estimated transportation costs. Other commenters asked the Department to clarify how program costs under the proposed Web site disclosures would be calculated differently than those required in the student consumer information section of the regulations. In addition, some of these commenters noted that although § 668.43 requires an institution to disclose program cost upon request, many students do not know to ask for it, or the information is not currently presented in a clear manner. Another commenter noted that the phrase "institutional costs" could be interpreted to mean only those costs payable to the institution and recommended that the phrase be changed to "cost of attendance."

Several commenters opined that providing program costs would confuse students. One of the commenters recommended using just the net price calculator as that would also ease institutional burden.

Discussion: Although we recently revised § 668.43(a) to provide that an institution must make program cost information readily available, not just upon the request of a student, that section does not require the institution to disclose program costs on its Web site. All of the disclosures in § 668.6(b), including the disclosure of program costs, must be on the same Web page to enable a prospective student to easily obtain pertinent information about a program and compare programs. Along these lines, and in view of the recent GAO investigation (see *http://www.gao.gov/new.items/d10948t.pdf*) raising concerns over program cost information, § 668.6(b) specifically requires an institution to disclose on the same Web page (1) Links to O*NET identifying the occupations stemming from a program or Web links to a representative sample of the SOCs for which its graduates typically find employment within a few years after completing the program, (2) the on-time graduation rate of students completing the program, (3) the placement rate for students completing the program, (4) the median loan debt incurred by students completing the program, and (5) the costs of that program. The institution must disclose the total amount of tuition and fees it charges a student for completing the program within normal time, the typical costs for books and supplies (unless those costs are included as part of tuition and fees), and the cost of room and board if the institution provides it. The institution may include information on other costs, such as transportation and living expenses, but in all cases must provide a Web link, or access, to the institutional information it is required to provide under § 668.43(a).

Changes: Section 668.6(b) has been revised to provide that an institution must disclose, for each program, all of the required information in its promotional materials and on a single Web page. The institution must provide a prominent and direct link to this page on the program home page of its Web site or from any other page containing general, academic, or admissions information about the program. In addition, this section is revised to specify that an institution must disclose the total amount of tuition and fees it charges a student for completing the

program within normal time, the typical costs for books and supplies (unless those costs are included as part of tuition and fees), and the amount of room and board, if applicable. The institution may include information on other costs, such as transportation and living expenses, but must provide a Web link, or access, to the program cost information it makes available under § 668.43(a).

One-Year Program

Comment: A commenter supported removing references to degree programs in proposed § 600.4(a)(4)(iii) believing it would avoid confusion and misrepresentation of the programs subject to the proposed regulations on gainful employment. Another commenter noted that for technical reasons the Department should have instead revised § 600.4(a)(4)(i)(C).

To better understand which programs would be subject to the reporting and disclosure requirements in proposed § 668.6, another commenter asked the Department to clarify whether the phrase "fully transferable to a baccalaureate degree" means that every credit must be transferable to that degree.

Discussion: A program is fully transferable to a baccalaureate degree if it meets the requirements in § 668.8(b)(1)(ii) and qualifies a student for admission into a third year of a bachelors degree program.

We agree that proposed § 600.4(a)(4)(iii) should be removed in order to avoid confusion and misrepresentation of the programs subject to the regulations on gainful employment. We also agree that § 600.4(a)(4)(i)(C) should be revised to state that an institution of higher education provides an educational program that is at least a one academic year training program that leads to a certificate, or other nondegree recognized credential, and prepares students for gainful employment in a recognized occupation.

Changes: Proposed § 600.4(a)(4)(iii) has been removed and § 600.4(a)(4)(i)(C) has been revised as noted in the discussion above.

Definition of a Credit Hour (§§ 600.2, 602.24, 603.24, and 668.8)

General

Comment: Several commenters supported the Secretary's proposed definition of a credit hour, including a commenter representing institutional registrars and admissions officers. A few commenters believed that institutions are already using this definition. One commenter believed that the Secretary's definition aligned with New York State's regulatory definition of a semester hour.

Discussion: We appreciate the support of those commenters who approved of the definition of a credit hour. Like some commenters, we believe that many institutions and others, including States, are already following the definition of a credit hour or a reasonably comparable standard that would require minimal or no adjustment for purposes of participating in Federal programs.

Changes: None.

Comment: Several commenters believed that during the negotiated rulemaking process, Federal and non-Federal negotiators reached tentative agreement on proposed credit-hour regulations that did not include a definition of a credit hour. A few commenters believed that during the negotiated rulemaking process, most non-Federal negotiators were opposed to a Federal credit-hour definition. Several of these commenters believed that the Department should adhere to the proposed regulations agreed upon during the negotiated rulemaking process and should remove the credit-hour definition from the regulations.

Other commenters believed that the Federal and non-Federal negotiators agreed to proposed regulations that relied more heavily on accrediting agencies and institutions to determine credit assignment policies. These commenters believed that the proposed regulations did not appropriately reflect this position.

Discussion: The commenters are correct in noting that during the negotiated rulemaking process tentative agreement was reached on the proposal related to credit hours that did not include a definition of a credit hour as proposed by the Department. Tentative agreement was reached by removing the definition from the proposals to satisfy one non-Federal negotiator. The Federal and non-Federal negotiators tentatively agreed to proposed credit hour regulations that relied heavily on accrediting agencies and institutions in determining the appropriate credit hours that represented a student's academic work. We also agree with the commenters who proposed continuing this reliance to a significant degree, and we believe that this reliance is reflected in the final regulations. We note that tentative agreements reached during the negotiated rulemaking meetings are not binding on the Department in form or substance. It is not unusual for most if not all of the substance of a tentative agreement to be included in a proposed regulation because the Department sees the benefits that are realized through the discussion process. In some cases, though, changes may be made upon further reflection, or to reinstate concepts that may have been removed in furtherance of an overall consensus that was not achieved. In the case of the definition of a credit hour we determined that the proposed definition of a *credit hour* is necessary to establish a basis for measuring eligibility for Federal funding. This standard measure will provide increased assurance that a credit hour has the necessary educational content to support the amounts of Federal funds that are awarded to participants in Federal funding programs and that students at different institutions are treated equitably in the awarding of those funds.

Changes: None.

Institutional Determination and Flexibility

Comment: Many commenters believed that institutions and accrediting agencies should have the ultimate responsibility for determining academic credit. Several commenters believed that institutions must have the discretion to use their existing systems of self-review and faculty involvement to determine the appropriate credit to assign to academic activities. Some of these commenters also believed that institutional processes are solely capable of considering the unique qualities of each class, program, professor, and institution. Two commenters believed that any problems with credit assignment can be addressed through existing institutional review procedures.

A few commenters agreed with the provision in proposed paragraph (3) of the credit-hour definition allowing institutions to provide reasonable "equivalencies" for the amount of work specified in proposed paragraph (1) of the definition. Two of these commenters believed that this provision allows institutions to use alternative methods of instruction and measures of credit that are more appropriate for institutions with nontraditional students entering the modern workforce. These commenters suggested making proposed paragraph (3) the first paragraph in the credit-hour definition in § 600.2. Another of these commenters believed that this provision would allow institutions the flexibility to use and develop innovative forms of course content delivery.

Several commenters believed that a Federal definition of a credit hour would undermine the integrity of the American higher education system

which they believed has been effective at assigning credit for over 100 years. One commenter noted that the education community has been able to reach consensus on credit determinations despite the lack of a uniform definition.

Many commenters believed that credit hours are fundamentally measurements of academic achievement and others believed that the Secretary's only reason for defining a credit hour is to have a standard measure for determining eligibility for and distribution of title IV, HEA program funds. The commenters believed that credit hours should not be treated as fiscal units. One of these commenters contended that the systems of assigning academic credit and determining the distribution of title IV, HEA program funds are different and should be kept separate. Another commenter expressed concern that treating credit hours as fiscal units would cause the Federal Government to give consideration to fiscal matters above all others.

Several commenters believed that the Secretary's proposed definition of a credit hour is too restrictive and does not account for institutional or programmatic variances. These commenters believed that a Federal credit-hour definition is inapplicable to a diverse educational system composed of different types of institutions, programs, and course formats.

One commenter expressed concern that the proposed credit-hour definition did not account for events that may occur within institutions' academic calendars, such as Federal and religious holidays, natural disasters, or campus safety issues. This commenter believed that these events may prohibit institutions' compliance with proposed paragraph (1) of the credit-hour definition because institutions may not meet the requirements for classroom instruction or minimum weeks in a semester.

A few commenters believed that the proposed credit-hour definition needed more specificity in proposed paragraph (1) with regard to the quantity of time that constitutes a credit hour. One commenter suggested revising the proposed definition to specifically state that a credit hour consists of 50 minutes of instructor contact for every credit earned in a 16 week semester and two hours of out-of-class work for each credit. Another commenter suggested defining a credit hour in proposed paragraph (1) of the definition in terms of clock hours.

One commenter suggested generalizing the proposed definition of a credit hour to state: (1) A credit hour is a unit of measure associated with the achievement of prescribed learning outcomes for a particular course of study, regardless of instructional delivery, (2) each institution participating in title IV, HEA programs must define, document, and consistently apply its process for the determination of credit for the achievement of learning outcomes, and (3) some institutions may also adhere to a standard academic credit conversion rate as defined by their accrediting agency or State agency.

One commenter believed that all accrediting agencies should be required to use a more general definition of a credit hour wherein a semester hour consists of at least 15 hours of classroom contact; 30 hours of supervised laboratory instruction, shop instruction, or documented independent study activities; or not fewer than 45 hours of externship, internship, or work related experience. This commenter believed that a quarter hour should consist of at least 10 hours of classroom contact; 20 hours of supervised laboratory instruction, shop instruction, or documented independent study activities; or not fewer than 30 hours of externship, internship, or work related experience.

One commenter believed that the proposed credit-hour definition provided institutions with too much autonomy to determine an equivalent amount of work as defined in proposed paragraph (1) because there are no standard measures for student learning outcomes. This commenter suggested revising proposed paragraph (1) to equate classroom time with direct faculty instruction and three hours of laboratory work with one hour of classroom time and two hours of out-of-class work. The commenter also suggested revising proposed paragraphs (2) and (3) to require institutions to establish and document academic activities equivalent to the work defined in proposed paragraph (1) and revising proposed paragraph (3) to require institutions to compare student achievement to the intended outcomes assigned and student achievement attained for credit hours measured under proposed paragraph (1).

Discussion: The credit-hour definition in § 600.2 and the provisions in §§ 602.24(f) and 603.24(c) were designed to preserve the integrity of the higher education system by providing institutions, accrediting agencies, and State agencies recognized under 34 CFR part 603 with the responsibility for determining the appropriate assignment of credit hours to student work. Under proposed §§ 602.24(f) and 603.24(c), the institution's accrediting agency, or recognized State agency if, in lieu of accreditation, the institution is approved by one of the four State agencies recognized under 34 CFR part 603, would be responsible for reviewing and evaluating the reliability and accuracy of an institution's assignment of credit hours in accordance with the definition of credit hour in § 600.2. These final regulations employ these basic principles of reliance on institutions and on accrediting agencies or, if appropriate, recognized State agencies, for ensuring institutions' appropriate determinations of the credit hours applicable to students' coursework.

The credit-hour definition in § 600.2 is intended to establish a quantifiable, minimum basis for a credit hour that, by law, is used in determining eligibility for, and the amount of, Federal program funds that a student or institution may receive. We believe that the definition of a credit hour in § 600.2 is consistent with general practice, provides for the necessary flexibilities, and may be used by institutions in their academic decision-making processes and accrediting agencies and recognized State agencies in their evaluation of institutions' credit assignments.

We note, however, that institutions, accrediting agencies recognized under 34 CFR part 602, and State agencies recognized under 34 CFR part 603 are required to use the definition in § 600.2 for Federal program purposes such as determining institutional eligibility, program eligibility, and student enrollment status and eligibility. We believe that in most instances the definition will generally require no or minimal change in institutional practice to the extent an institution adopts the definition for its academic purposes rather than maintaining a separate academic standard.

The provisions in §§ 600.2, 602.24, and 603.24 neither limit nor prescribe the method or manner in which institutions may assign credits to their courses for academic or other purposes apart from Federal programs. These regulations do not require institutions to adopt the definition of a credit hour in § 600.2 in lieu of existing institutional measurements of academic achievement, but rather to quantify academic activity for purposes of determining Federal funding. An institution will be able to continue using the long-standing credit-assignment practices that it has found to be most effective for determining credit hours or equivalent measures for academic purposes, so long as it either ensures conformity, or uses a different

measure, for determining credit hours for Federal purposes. This position is consistent with the application of other Federal program requirements. For example, an institution may choose to define full-time enrollment status in a semester for academic purposes as 15 semester hours while it defines full-time for title IV, HEA program purposes as 12 semester hours under the minimum requirements of the definition of *full-time* in § 668.2.

We do not agree that the proposed definition is too restrictive or is inapplicable in a diverse educational system. Nor do we believe that the definition would prevent institutions from taking into consideration events such as Federal and religious holidays or campus safety issues. In the event of natural disasters, the Department has consistently provided guidance on how the regulations may be applied in such exceptional circumstances. The credit-hour definition allows an institution to establish an academic calendar that meets its needs and its students' needs, while ensuring a consistent measure of students' academic engagement for Federal purposes.

We do not agree with the commenters that paragraph (1) of the proposed credit-hour definition needs more specificity of the term "one hour." We believe that it is unnecessary to define one hour as either 50 minutes or one clock hour because the primary purpose of paragraph (1) of the proposed credit-hour definition is to provide institutions with a baseline, not an absolute value, for determining reasonable equivalencies or approximations for the amount of academic activity defined in the paragraph.

We do not agree that the proposed definition should be more generalized or that differing standards should be adopted. A credit hour is a basic unit for determining the eligibility of recipients for, and the amount of, Federal assistance that may be provided to parties participating in Federal programs. We believe the proposed definition provides a consistent basis for the equitable treatment of participants and recipients.

Changes: We have revised the definition of *credit hour* to clarify the basic principles applied in the proposed definition of a *credit hour* to delineate further that it is an institution's responsibility to determine the appropriate credit hours or equivalencies. The revision requires that, except as provided in § 668.8(k) and (l), an institution determines the credit hours applicable to an amount of work represented in intended learning outcomes and verified by evidence of student achievement that reasonably approximates not less than the amount of work described in paragraph (1) or (2) of the definition of credit hour in § 600.2 of the final regulations. The final regulations also continue to provide that institutions may establish other measures that approximate the minimum standards in paragraph (1) or (2) of the definition in § 600.2, thus permitting each institution to consider the unique characteristics of its course and program offerings, as well as, its distinctive student populations.

Comment: Many commenters believed that credit hours do not represent a reasonable assessment of student learning. Many commenters believed that the Secretary's proposed definition of a credit hour dictates that the outdated concept of "seat time" is the main metric by which program substance should be judged rather than the appropriate focus on student learning outcomes.

A few commenters believed that a credit hour, and in particular, the Carnegie Unit, does not account for academic rigor. These commenters believed that a student's completion of a specified number of hours of direct instruction and out-of-class work does not provide assurance that the student has acquired a certain level of competency.

Two commenters believed that the proposed credit-hour definition does not consider the actual behavior of students in American higher education. One commenter believed that the typical student does not spend two hours on out-of-class work for every hour of instruction. The other commenter believed that there has not been enough research into the amount of time that students are engaged in academic activities.

One commenter believed that the Secretary's proposed credit-hour definition put too much emphasis on work outside of class instead of student learning outcomes.

A few commenters believed that credit hours are measurements of educational inputs. One commenter stated that credit hours, when used to determine eligibility for financial aid, are only proximate preconditions for student learning and are equivalent to other input measures such as scores on standardized tests, high school GPAs, or faculty degrees.

One commenter believed that the credit-hour definition would force institutions to treat all students the same, regardless of ability, as long as they are in class for the specified number of hours.

One commenter expressed concern that the Secretary's proposed credit-hour definition does not consider current efforts in higher education to increase institutional accountability. This commenter believed that the proposed credit-hour definition would undermine institutional efforts to assess student learning outcomes.

Discussion: We do not agree with the commenters that the credit-hour definition emphasizes the concept of "seat-time" as the primary metric for determining student work. We believe that the definition of a *credit hour* in § 600.2 in these final regulations emphasizes that institutions may award credit to courses for an amount of work represented by verifiable student achievement of institutionally established learning outcomes.

Eligibility for Federal programs requires that institutions are able to demonstrate that the amount of work in a course assigned credit for Federal purposes will constitute a reasonable approximation of the amount of academic activity defined in paragraph (1) of the definition of credit hour in § 600.2. Institutions are responsible and accountable for demonstrating that each course has the appropriate amount of educational content to receive credit for Federal program purposes and for students to achieve the level of competency defined by institutionally established course objectives.

Changes: None.

Comment: Many commenters believed that a Federal credit-hour definition will stifle institutions' ability to develop new and innovative education models, especially with regard to delivery methods. Several commenters believed that institutions' ability to respond creatively to changing pedagogies, circumstances, and student needs would be limited under the proposed credit-hour definition.

A few commenters believed that the proposed credit-hour definition would limit innovation in education at a critical time. One of these commenters believed that because of the economic recession, institutions need to be more innovative in developing alternative delivery methods. One commenter believed that institutions must be able to respond to the rapidly changing education sector. Another commenter believed that other nations are currently developing new educational models and the United States will fall behind these nations in education.

Many commenters believed that the Secretary's proposed credit-hour definition would have a negative impact on alternative delivery methods such as compressed and accelerated programs,

online and distance education programs, and hybrid programs with online and in-class components. A few commenters believed that the proposed credit-hour definition would particularly suppress innovation of delivery methods because institutions would be focused on ensuring they meet the Federal definition of a credit hour and not on the desired academic outcomes. These commenters believed that institutions would not be able to respond to changing student populations by diversifying delivery methods. A few commenters noted that minority students and nontraditional students such as veterans, active military personnel, and working adults would be particularly harmed because they rely on programs offered through alternative delivery methods.

Several commenters believed that the proposed credit-hour definition is not applicable to alternative delivery methods. A few commenters believed that credit hours are not compatible with technological advancements in education. These commenters believed that the proposed credit-hour definition would minimize the use of technology in education. Some commenters believed that proposed paragraph (1) assumed a classroom or lecture based model of instruction and was not applicable to online or hybrid programs.

A few commenters questioned how to measure direct faculty instruction with regard to an online or hybrid program when no physical classroom exists. Two commenters noted that in distance education and hybrid programs, the concept of contact hours does not apply. The commenters recommended expanding paragraph (3) of the proposed definition to specifically address that institutions offering nontraditional programs including distance delivery programs and accelerated programs may provide institutionally established equivalencies for the amount of work required in paragraph (1) within the discretion of the institution.

Several commenters believed that the Secretary's proposed credit-hour definition would negatively impact how earned credits are calculated for online and hybrid courses.

One commenter believed that the Secretary's proposed credit-hour definition represented an effort by the Secretary to reinstate a regulation that had been removed in 2002 which required higher education programs that did not operate in a standard semester, trimester, or quarter system to offer a minimum of 12 hours of course work per week to maintain eligibility for title IV, HEA program funds.

Two commenters believed that the Secretary's proposed credit-hour regulations would legitimize institutions' use of the Carnegie Unit, which generally consists of a ratio of two hours of work outside of class for every hour of classroom time, and increase scrutiny on institutions that do not currently use the Carnegie Unit. These commenters believed that under the proposed regulations, an institutional credit system that is not currently based on the Carnegie Unit would be undervalued because these institutions would have a significant burden to develop and demonstrate student achievement of learning outcomes that their peers using the Carnegie Unit would not have.

Discussion: We do not agree with the commenters that the credit-hour definition in § 600.2 will limit institutions' flexibility to creatively respond to innovations in educational delivery methods and changing student needs. A fundamental component of the credit-hour definition in § 600.2 provides that institutions must determine the academic activity that approximates the amount of work defined in paragraph (1) based on institutionally established learning outcomes and verifiable student achievement. The definition allows institutions that have alternative delivery methods, measurements of student work, or academic calendars to determine intended learning outcomes and verify evidence of student achievement.

All institutions participating in title IV, HEA programs have a responsibility to ensure appropriate treatment of Federal funds, regardless of course format or educational delivery method. The definition in § 600.2 provides institutions with a baseline for determining the amount of student work necessary for title IV, HEA program eligibility, but does not specify the particular program formats or delivery methods that institutions must use.

The credit-hour definition is not a reinstatement of the old "12-hour rule," that was removed from the Department's regulations in 2002. The 12-hour rule required programs that did not operate in standard semester-, trimester-, or quarter-term systems to offer a minimum of 12 hours of course work per week to maintain eligibility for Federal programs. The credit-hour definition in these final regulations applies to all institutions, regardless of whether they operate on a standard-term academic calendar. In addition, while the old 12-hour rule required 12 hours of instruction, examination, or preparation offered by an institution per week, the credit-hour provisions in § 600.2 require institutions to provide students with an amount of work equivalent to the amount of work described in paragraph (1) of the credit-hour definition.

Changes: None.

Comment: Several commenters objected to proposed paragraph (3) of the credit-hour definition. A few commenters believed that paragraph (3) of the proposed credit-hour definition is vague regarding the entity responsible for determining "reasonable equivalencies." A few commenters believed that the proposed credit-hour provisions did not provide enough guidance on what academic activities the Department would accept as reasonable equivalencies for the amount of work defined in proposed paragraph (1). A few commenters believed that the term "reasonable" put the Department in the position of final arbiter on the determination of reasonable equivalencies.

One commenter believed that proposed paragraph (3) created uncertainty and the potential for litigation related to whether an institution's proposed equivalency for the work defined in paragraph (1) is reasonable. This commenter expressed concern that institutions would be liable for using equivalencies that the Department viewed as unacceptable. One commenter asked for clarification on the types of corrective actions that the Department can take to enforce the provisions of the credit-hour definition in proposed § 600.2.

Discussion: Institutions have a responsibility to ensure that the use of Federal program funds is in accordance with applicable regulations. In addition, the Department has the oversight responsibility to determine that institutions are acting in accordance with the definition of a credit hour in these final regulations to ensure the appropriate use of Federal program funds. It is therefore necessary and appropriate for the Secretary to review an institution's assignment of credit for Federal purposes and an accrediting agencies' or State agencies' evaluations of an institution's credit polices and their implementation to determine whether an institution is assigning credit hours for Federal program purposes in accordance with these final regulations. If an institution is found to be out of compliance for Federal program purposes with the credit-hour definition in § 600.2, the amount or Title IV, HEA funds awarded under the incorrect assignment of credit hours may be recalculated to establish a repayment liability owed by the

institution. In cases where the amount of credit hours assigned to a program is significantly overstated, the Secretary may fine the institution or limit, suspend, or terminate its participation in Federal programs.

Changes: None.

Comment: Some commenters believed that the proposed credit-hour definition would alter institutions' current credit assignments and courses. A few of these commenters believed that a Federal definition of a credit hour sets an expectation that institutions should assign additional credit to courses if the work exceeds the amount defined in the proposed definition. One commenter believed that the proposed definition would increase the amount of class time that students are required to complete in order to earn credit. Another commenter believed that the proposed definition could cause institutions to increase courses' lecture or theory content and decrease hands-on training.

One commenter believed that the proposed credit-hour definition would force accrediting agencies to impose homework requirements on vocational institutions.

Discussion: The credit-hour definition does not require institutions to alter their assignment of credit to courses for academic purposes; however, institutions have the responsibility to demonstrate that credit hours assigned to courses for Federal program purposes adhere to the minimum standards of the credit-hour definition in § 600.2. If an institution determines that its current assignment of credits to its programs for Federal program purposes does not satisfy the minimum standards in the regulation, the institution will either have to reduce the credits associated with the program, increase the work required for the program, or both.

There is no requirement for institutions to assign additional credit to courses if the amount of work exceeds the amount described in paragraph (1) of the credit-hour definition. We have revised the credit-hour definition in § 600.2 to clarify that the amount of work described in paragraph (1) represents a minimum acceptable level of academic activity for which credit can be awarded to constitute a credit hour for Federal purposes. Institutions may use their discretion to assign additional credit if the amount of work for a course justifies such an assignment of credit in accordance with § 600.2.

There is no requirement under the credit-hour definition that would force accrediting agencies to impose homework requirements on vocational institutions. In general, institutions will be assessed to determine if they have established credit hours for title IV, HEA program purposes that meet at least the minimum standards in the regulation. Unless the program is subject to the credit-to-clock-hour conversion requirements in § 668.8(l) and (k), an institution would be required to determine the appropriate credit hours in accordance with paragraphs (1) and (2) of the credit-hour definition in § 600.2 of these final regulations for a program or coursework in a program that has no student work outside the classroom.

Changes: We have revised the credit-hour definition in § 600.2 to clarify that the amount of work specified in paragraph (1) is a minimum standard and that there is no requirement for the standard to be exceeded.

Comment: One commenter believed that the proposed provisions in § 600.2 did not appropriately address faculty workloads or faculty time in class.

Discussion: We do not believe that § 600.2 should address faculty workloads or faculty time in class as these issues are institutional administrative considerations outside the scope of these final regulations which set minimum standards for the measurement of credit hours.

Changes: None.

Comment: One commenter questioned why the proposed credit-hour regulations did not address § 668.9 which provides in paragraph (b) that a public or private nonprofit hospital-based school of nursing that awards a diploma at the completion of the school's program of education is not required to apply the formula contained in § 668.8(l) to determine the number of semester, trimester, or quarter hours in that program for purposes of calculating Title IV, HEA program funds. This commenter questioned whether for-profit hospital-based nursing programs would be subject to the proposed provisions in § 668.8(k) and (l).

Discussion: Section 481A of the HEA and § 668.9(b) specify that any regulations promulgated by the Secretary concerning the relationship between clock hours and semester, trimester, or quarter hours in calculating student grant, loan, or work assistance under the title IV, HEA programs do not apply to a public or private nonprofit hospital-based school of nursing that awards a diploma at the completion of the school's program of education.

Changes: None.

Comment: One commenter believed that institutions would need an accrediting or State agency's review of their programs' compliance with the proposed credit-hour definition in § 600.2. The commenter believed that the regulations are unclear on how programs should operate in the interim.

One commenter expressed concern that waiting for accrediting agencies to revise their standards after the proposed regulations are finalized would be detrimental to institutions offering programs in alternative formats.

One commenter believed that institutions will be developing new credit policies and should be afforded an adjustment period to receive and react to guidance from State agencies on their credit assignment policies.

Discussion: The provisions in §§ 602.24 and 603.24 provide that an institution must have a process for assigning credit that meets its accrediting agency's or State agency's standards, as well as, the credit-hour definition in § 600.2. An institution's credit assignment process is subject to review by its accrediting agency or, in some cases, a State agency recognized under 34 CFR part 603. We believe that institutions already have processes for assigning credit and, to the extent that these existing processes do not comply with these final regulations, institutions will need to revise their credit assignments to comply with the credit-hour definition in these final regulations for Federal program purposes. During the interim period between the effective date of these regulations and an accrediting agency's or State agency's review of institutions' compliance with the credit-hour definition in § 600.2, an institution is responsible and accountable for ensuring that its credit-hour assignments conform to the provisions of the credit-hour definition in § 600.2 of these final regulations and that its processes are in accord with its designated accrediting agency's or recognized State agency's requirements.

Changes: None.

Out-of-Class Student Work

Comment: Several commenters did not agree with the component of proposed paragraph (1) of the credit-hour definition related to student work outside of class. A few commenters believed that an institution cannot determine how much time students spend on work outside of class and that quantifying work outside of the class does not account for variations in students' learning abilities and styles. One commenter believed that the Secretary's proposed credit-hour definition did not take into account the nature of different courses. This commenter believed that certain courses require more direct faculty instruction and supervision while other courses may require more study outside of the classroom.

Two commenters did not agree with the Secretary's proposed credit-hour definition with regard to the ratio of classroom time to time outside of class and suggested revising the proposed definition to allow for more direct classroom instruction. These commenters recommended revising proposed paragraph (1) to define a credit hour as one hour of classroom or direct faculty instruction and a minimum of two hours of student work in or out of the classroom.

One commenter recommended that the Department distinguish class time from time outside of class by making explicit in the proposed definition that class time refers to instruction.

One commenter asked for clarification of proposed paragraph (2) regarding whether a credit hour awarded for laboratory work must consist of one-hour work in the laboratory and two hours outside the laboratory performing either preparation or follow up activities.

Discussion: Institutions must demonstrate that the credit hours awarded for the amount of academic work necessary for Federal program purposes approximates the amount of work defined in paragraph (1) of the definition of credit hour in § 600.2. The credit-hour definition in § 600.2 sets a minimum standard and institutions may offer additional hours of instructional time to courses or provide for additional student work outside of class beyond what is specified in paragraph (1) of the definition at their discretion. We do not believe it is necessary to decrease the amount of out-of-class time specified in paragraph (1) of the definition.

We do not want to limit the interpretation of class time only to direct instruction in order to take into consideration other in-class activities such as examinations. Similarly, the provisions related to laboratory work in paragraph (2) of the definition do not require one hour of work in the laboratory and two hours of out-of-class work related to the laboratory. Paragraph (2) of the credit-hour definition allows institutions to use their discretion to determine the in-class and out-of-class components for laboratory work to the extent the credit awarded reasonably approximates the requirements of paragraph (1) of the credit-hour definition in § 600.2. An institution's basis for making this determination would be subject to review by its accrediting agency, the State agency recognized under 34 part 603, and the Department in order to demonstrate that it was reasonable.

Changes: None.

Authority and Need To Regulate

Comment: Several commenters believed that the Secretary does not have the legal authority to promulgate the proposed regulations in §§ 600.2, 602.24, 603.24, and 668.8. These commenters believed the credit-hour definition in proposed § 600.2 represented a Federal intrusion into academic matters. A few commenters believed that the General Education Provisions Act (20 U.S.C. 1232a) and the Department of Education Organization Act (20 U.S.C. 3403) prohibit the Secretary from exercising undue control of curricula, programs, administration, and personnel of educational institutions. These commenters believed that the Secretary needs explicit Congressional authorization to promulgate regulations that intrude in the academic decision-making process at institutions. Two commenters recommended including language in the final regulations reaffirming that it is appropriate for institutions and accrediting agencies to address student achievement, but that it is not within the Secretary's authority.

Many commenters believed that a Federal definition of a credit hour represents a Federal intrusion into a core academic issue and the academic decision-making process. A few of these commenters expressed concern that a Federal definition of a credit hour would set a precedent for Federal interference in other academic matters. One commenter representing institutional registrars and admissions officers believed the proposed definition of a credit hour should be revised to require an institution to make a reasonable determination of whether the institution's assignment of credit hours conforms to commonly accepted practice in higher education as demonstrated in the portability of such credits to other institutions of higher education offering similar programs.

One commenter believed that the Secretary is not authorized to make academic decisions and did not want institutions to be subject to any adverse administrative action by the Department if the Department did not concur with an institution's or accrediting agency's determination of appropriate credit. This commenter suggested that the final regulations specify that the credit hours awarded for a program shall be deemed in compliance with the definition of a credit hour as defined in § 600.2, where the credit hours awarded have been approved by the institution's accrediting agency based upon a review performed in accordance with § 602.24(f).

Several commenters believed that the Secretary's proposed credit-hour definition was incongruent with existing Federal laws, State regulations, or accrediting agency policies.

One commenter believed that the proposed credit-hour definition in § 600.2 could conflict with the Americans with Disabilities Act of 1990, as amended, which requires entities such as institutions of higher education to make reasonable accommodations for students with disabilities.

Several commenters believed that the proposed credit-hour definition would force some institutions that use credit hours to use clock hours. These commenters believed that this change would conflict with some State regulations and is not required by any other Federal agency.

A few commenters believed that the proposed credit-hour regulations were harmful to institutions that had been required to convert from clock hours to credit hours by State mandates. These commenters believed that these institutions would be at a disadvantage compared to institutions that were previously using credit hours. One commenter recommended that the Department allow institutions that have converted to credit hours based on State mandates to use State-mandated clock-to-credit-hour conversion rates to determine Federal program eligibility.

Several commenters believed that the proposed credit-hour definition may directly violate some State regulations because it inherently requires that institutions take attendance.

Discussion: The Secretary is authorized under 20 U.S.C. 1221e–3, to make, promulgate, issue, rescind, and amend rules and regulations governing the manner of operation of, and governing the applicable programs administered by, the Department. The intent of the regulations in §§ 600.2, 602.24, 603.24, and 668.8 is not to interfere with the academic decision-making processes at institutions, accrediting agencies, and recognized State agencies, but to rely on these processes to ensure the integrity of the Federal programs, including the title IV, HEA programs. Fundamental to these decision-making processes is the measurement of the credit used to determine the amounts of title IV, HEA program funds provided to eligible students who are enrolled in eligible programs. Since the regulations establish a minimum standard, and institutions may choose to include more work for their credit hours than the minimum amount, credit hours at one institution will not necessarily equate to credit hours at another institution for a

similar program. Thus, we do not agree with the recommendation that an institution should be required to demonstrate the portability of such credits to other institutions of higher education offering similar programs as we believe such a requirement would, in fact, interfere with the academic decision-making processes at institutions.

These regulations should not be inconsistent with current Federal laws, State regulations, and accrediting agencies' policies because of their intended narrow application to the determination of eligibility for, and distribution of, Federal program funds. Therefore, to the extent an institution determines that it may be necessary to use a current credit assignment system, for example, to comply with other requirements such as State mandates, an institution may continue using its current system for purposes unrelated to Federal programs.

We do not agree with the commenter that the credit-hour definition in § 600.2 conflicts with the Americans with Disabilities Act of 1990, as amended. The credit-hour definition in § 600.2 does not prohibit institutions from developing policies for academically accommodating students with disabilities in accordance with the Americans with Disabilities Act of 1990, as amended. The credit-hour definition provides institutions with the flexibility to determine the appropriate credit hours or equivalencies to award for student work.

Changes: None.

Comment: Several commenters believed that a Federal definition of a credit hour is unnecessary. Many of these commenters noted that there has been no history of fraudulent practices in credit assignment by institutions in the nonprofit sector and that any fraud or abuses identified have been in the for-profit sector. Some of these commenters believed that it is unfair to apply a Federal definition of a credit hour to all institutions. One commenter suggested that the credit-hour definition apply only to institutions that are not accredited by regional or specialized accreditors.

A few commenters believed that the Secretary's only motive to define a credit hour stemmed from a report from the Department's Inspector General regarding one regional accrediting agency's accreditation of a for-profit institution it found to have inappropriate credit-hour policies. One commenter believed that although there have been problems reported with some institutions' assignment of credit hours, these problems were primarily related to two regional accrediting agencies' evaluation of degree programs and not with vocational career education programs.

One commenter expressed concern that enforcement of institutions' compliance with the credit-hour definition would be directed primarily at for-profit institutions even though there have been inappropriate credit awarding practices at nonprofit institutions as well.

A few commenters believed that institutional credit assignment problems identified in the nonprofit sector are effectively resolved through the existing processes of accreditation and institutional self-review.

One commenter suggested that instead of establishing a Federal credit-hour definition, the Department should require institutions to describe their credit assignment policies in their catalogs and promotional materials.

Discussion: The Secretary did not intend to define a credit hour for Federal program purposes as a punitive measure against institutions in a particular sector or institutions that have engaged in inappropriate credit awarding practices in the past. Instead, the revised credit-hour definition is intended to provide a minimum, consistent standard for all institutions regardless of State, sector, or accreditor in determining the amount of student work necessary to award credit hours equitably for Federal program purposes.

Changes: None.

Comment: A few commenters believed that a Federal credit-hour definition is unnecessary because State agencies already review institutions' credit-hour policies within their general oversight of an institution's integrity.

Discussion: We do not agree. Many State agencies do not perform such oversight activities nor do they use a uniform standard that would assure the equitable administration of Federal programs.

Changes: None.

Administrative Burden

Comment: Several commenters believed that the proposed credit-hour provisions would cause an undue administrative and financial burden on institutions. A few commenters believed that institutions would be forced to focus their administrative resources on ensuring that their programs and courses conform to the Federal credit-hour definition and remain eligible for title IV, HEA program funds instead of other important academic matters such as ensuring program integrity. Other commenters believed that in order to comply with the proposed credit-hour definition, institutions would be burdened with administrative tasks such as reevaluating and significantly restructuring their credit-assignment systems, ensuring compliance with their accrediting agency's standards, reconfiguring the use of classroom space, and recalculating students' financial aid packages.

One commenter believed that State agencies and accrediting agencies will be burdened by the requirement to focus on institutions at a more detailed level and will need to increase their staffs and costs to account for the increased workload. This commenter believed that increased costs would be passed to institutions, and subsequently, to students.

Discussion: We do not believe that assigning credit to courses in accordance with the definition of credit hour in § 600.2 for Federal program purposes will cause any significant increase in administrative or financial burden on institutions. Institutions participating in Federal programs such as title IV, HEA programs are already responsible for ensuring the appropriate treatment of Federal funds, including accurate distribution of Federal funds to students. Institutions will not be required to change their current systems of awarding credit for academic purposes which in many instances will already be compliant with these final regulations, but some institutions will be required to make the necessary changes to ensure accurate and equitable credit assignments for Federal program purposes.

We do not believe that the credit-hour definition will cause any significant increase in the administrative burden on accrediting agencies or State agencies recognized under 34 CFR part 603. Section 496(a)(5) of the HEA requires accrediting agencies recognized by the Secretary to evaluate an institution's or program's "measures of program length and the objectives of the degrees or credentials offered" which inherently requires accrediting agencies to evaluate the courses that constitute institutions' programs.

Changes: None.

Accrediting Agency Procedures (§ 602.24(f))

Comment: Several commenters supported the addition of § 602.24(f). These commenters believed that accrediting agencies are the appropriate entities to ensure institutions' compliance with the credit-hour provisions in § 600.2.

Many other commenters believed that the proposed provisions in § 602.24(f) are unnecessary. These commenters

believed that the integrity of institutions' assignment of credit hours is already reviewed and evaluated by accrediting agencies through a system of peer review. These commenters also believed that the peer-review system is capable of recognizing how credit hours are defined in different settings. A few commenters noted that the Secretary has already permitted accrediting agencies to perform this function and that accreditors have been diligent in their duties. One commenter believed that the Secretary could tighten Federal regulatory control over institutions' credit-hour policies by revising the existing accrediting agency recognition regulations in 34 CFR part 602.

One commenter believed that accrediting agencies have long-standing practices, or in the case of some national accrediting agencies, formulas that provide reasonable measures of credit hours.

Discussion: We agree with the commenters who believed that accrediting agencies' peer-review systems are structured to evaluate the appropriateness of institutions' credit policies and assignments in diverse educational settings. Amending § 602.24 to add § 602.24(f) initially was a proposal of the non-Federal negotiators representing accrediting agencies to clarify their role in overseeing the assignment of credit hours by institutions as it relates to Federal program requirements. With the addition of the credit-hour definition in § 600.2, we added § 602.24(f) regarding an accrediting agency's review of an institution's policies and procedures for assigning credit hours, and the institution's application of these policies because this addition indicates how those requirements fit together and makes the two regulations consistent.

We note that these provisions relate solely to an accrediting agency's consideration of an institution's implementation of the credit-hour definition for Federal program purposes. The regulations do not require the accrediting agency to use the definition of credit hour in § 600.2 for non-Federal purposes nor do the regulations prohibit an accrediting agency from only using the definition of credit hour in § 600.2.

We believe that § 602.24(f) is the appropriate place to define accrediting agencies' responsibilities for reviewing institutions' processes for assigning credit for title IV, HEA program purposes because § 602.24 defines the procedures institutional accreditors must have if the institutions they accredit participate in title IV, HEA programs.

Changes: None.

Comment: Several commenters did not support the addition of § 602.24(f) because they believed the proposed provisions would allow the Department to indirectly regulate academic matters. A few of these commenters requested that the Department add language to the regulations making it clear that no provision in § 602.24 would permit the Secretary to establish any criteria that specifies, defines, or prescribes the procedures that accrediting agencies shall use to assess any institution's credit-hour policies or procedures.

One commenter believed that by requiring accrediting agencies to ensure institutions' compliance with the proposed credit-hour definition in § 600.2, the Department would be placing accrediting agencies into a quasi-regulatory role for which they are neither designed nor intended. This commenter believed that over time accrediting agencies' regulatory role will be seen as their most important role and accrediting agencies will in effect become government agents. Another commenter believed that proposed § 602.24(f) would cause accrediting agencies to focus on institutions' assignment of credit hours instead of other valuable areas of review.

One commenter requested clarification of whether § 602.24(f) would allow the Department to rely exclusively on an accrediting agency's determination of an institution's definition and assignment of credit, or whether the Department would have separate authority under the regulations to evaluate and regulate an institution's definition or assignment of credit for title IV, HEA program eligibility purposes.

One commenter believed that an accrediting agency found to be permitting inappropriate credit assignment activities at institutions should be cited and forced to address the identified issues. Another commenter believed that institutions' policies for assigning credit are extremely diverse, and that the Department is not capable of properly determining whether an accrediting agency has appropriately evaluated the variety of institutional policies.

One commenter believed the provisions in § 602.24(f) are unnecessary because section 496(a)(5)(H) of the HEA requires accrediting agencies to assess institutions' measures of program length but does not mandate any quantitative requirements establishing the components necessary for the measure of credit.

Discussion: The provisions in § 602.24(f) reflect that accrediting agencies are the oversight bodies responsible for evaluating the appropriateness of institutions' policies and procedures for assigning credit that is consistent with Federal program purposes. This role is in accordance with the provisions of the HEA under which accrediting agencies have the primary responsibility, as part of the oversight triad with the Federal Government and State agencies, to determine whether institutions participating in Federal programs such as the title IV, HEA programs, meet minimum standards of educational quality. The provisions in § 602.24(f) further support accrediting agencies in fulfilling these responsibilities but do not prescribe the methods by which accrediting agencies must perform these evaluations.

If the Secretary determines that a recognized accrediting agency does not comply with the provisions in § 602.24(f) for purposes of Federal programs, or is not effective in its performance with respect to these provisions, then the Secretary may restrict or remove the agency's recognition in accordance with 34 CFR part 602, subpart C.

We do not agree that the provisions in § 602.24(f) are unnecessary. While section 496(a)(5)(H) of the HEA requires accrediting agencies to assess institutions' measures of program length, we believe the provisions in § 602.24(f) provide necessary clarification regarding the means of evaluating an institution's assignment of credit hours.

Changes: None.

Comment: A few commenters believed that the provisions in § 602.24(f) were not specific enough with regard to the requirements for accrediting agencies.

One commenter proposed that the Department require accrediting agencies to base their evaluations of the validity of institutions' credit-hour assignments on the manner in which other institutions offering similar programs assess and accept credits for purposes of evaluating credit for transfer.

One commenter asked the Department to revise proposed § 602.24(f)(1)(ii) to specify that accrediting agencies must make a determination of whether an institution's assignment of credit hours conforms to the provisions in proposed § 600.2.

One commenter recommended that the Department require accrediting agencies to prescribe clearly the methodologies and equivalencies that will be utilized by institutions to determine the amount of work specified by the credit assigned to courses as

represented through stated student learning outcomes and demonstrated achievement of those outcomes, regardless of the delivery method.

One commenter recommended revising the proposed accrediting agency requirements in § 602.24(f) to state that in the case of competency-based programs that do not use clock hours or classroom time as a basis for credit, an accrediting agency must determine the appropriate assignment of credit by reviewing a well-substantiated list of competencies and assessing documented evidence of student achievement of competencies.

A few commenters requested that the Department revise proposed § 602.24(f)(2) to clarify that accrediting agencies have the authority and autonomy to determine review methodologies and techniques.

One commenter believed that it would be appropriate for an accrediting agency to review a sample of an institution's curriculum to determine whether the credit assignment policies were being appropriately applied by an institution, but it would not be appropriate for an accrediting agency to employ an unspecified sample of other institutions to determine whether or not the credits awarded for a particular course or program conformed to commonly accepted practice in higher education. This commenter suggested revising proposed paragraph § 602.24(f)(2) to specify that the agency must sample courses within an institution's program of study.

One commenter suggested that accrediting agencies review annual institutional submissions of data, policies, and procedures for assigning credit hours.

Discussion: We do not believe that further specificity is appropriate or necessary in § 602.24(f). Accrediting agencies must have the flexibility to review institutional credit-assignment processes that may vary widely in their policies and implementation and may have differing methods for measuring student work such as direct assessment. We believe that accrediting agencies are capable of developing appropriate methods for evaluating institutional credit processes without providing further specificity in the regulations. We note that accrediting agencies must demonstrate their ability to appropriately review these areas in order to receive recognition by the Secretary as reliable authorities on the quality of education or training offered by the institutions and programs they accredit, and that evaluation by the Secretary continues during periodic reviews of accrediting agencies.

We believe that it is not necessary to specify how an accrediting agency should review a competency-based program that does not use credit hours or clock hours as a basis for credit. In the case of a competency-based program, the institution may either base the assignment of credit on the time it takes most students to complete the program, or the program must meet the definition of a direct assessment program in § 668.10. In the first scenario, the institution's accrediting agency would review the institution's compliance with the provisions in § 600.2 or § 668.8(k) and (l) as applicable. In the second scenario, the institution's accrediting agency must review and approve each of the institution's direct assessment program's equivalencies in terms of credit hours or clock hours.

Changes: None.

Comment: A few commenters opposed the proposed provisions in § 602.24(f)(1)(i)(A) and (B) requiring accrediting agencies to evaluate an institution's policies and procedures for determining credit hours in accordance with proposed § 600.2 and to evaluate an institution's application of those policies and procedures to its programs and courses. Two commenters suggested that the provisions should not require accrediting agencies to evaluate compliance with proposed § 600.2 but should permit institutions to justify the manner in which credit hours are assigned and permit accrediting agencies to determine whether an institution's application of its policies and procedures are appropriate. These commenters believed that the proposed provisions require accrediting agencies to instruct institutions to follow a specific approach to assigning credit hours.

A few commenters suggested that the cross reference to the proposed credit-hour definition in § 600.2 be stricken from proposed § 602.24(f)(1)(i)(A) and replaced with a provision requiring accrediting agencies to conduct their review of an institution's assignment of credit hours consistent with the provisions of § 602.16(f).

Discussion: We do not believe that the provisions in proposed § 602.24(f) require accrediting agencies to mandate specific policies for institutions with regard to assigning credit hours to programs and coursework. However, we do believe that it is necessary to specify in § 602.24(f) that accrediting agencies must review an institution's policies and procedures for determining credit hours, and the application of those policies and procedures to programs and coursework in accordance with § 600.2 for title IV, HEA program purposes. Accreditation by an accrediting agency recognized by the Secretary is an institutional and programmatic requirement for eligibility for the title IV, HEA programs.

It is appropriate to specify the responsibilities of an accrediting agency in reviewing institutions' processes for assigning credit hours in § 602.24, and not § 602.16. The provisions in § 602.24 are related specifically to procedures accrediting agencies must have for institutions they accredit to obtain eligibility to participate in title IV, HEA programs. The provisions in § 602.16(f) address the processes used by accrediting agencies in setting standards in statutorily-defined areas required for agencies to be recognized by the Secretary.

Changes: None.

Comment: A few commenters expressed concern about proposed § 602.24(f)(1)(ii), which requires accrediting agencies to determine whether an institution's assignment of credit hours conforms to commonly accepted practice in higher education.

A few commenters believed that this proposal was inconsistent with the proposed credit-hour definition in § 600.2 and expressed a preference for the language in proposed § 602.24(f)(1)(ii).

One commenter suggested striking this proposed provision from the regulations and including this information in the "Guide to the Accrediting Agency Recognition Process" issued by the Department. This guide was issued in August 2010 under the title "Guidelines for Preparing/Reviewing Petitions and Compliance Reports."

One commenter suggested revising proposed § 602.24(f)(1)(ii) to require accrediting agencies to evaluate institutions' assignment of credit hours based on a comparative study of similar institutions.

Discussion: We do not agree that the provisions in §§ 600.2 and 602.24(f)(1)(ii) are inconsistent. The provisions in § 600.2 establish a title IV, HEA program requirement for institutions to award credit hours for an amount of academic work that is a reasonable equivalency to the amount of work defined in paragraph (1) of the credit-hour definition. By comparison, the reference to "commonly accepted practice in higher education" in § 602.24(f)(1)(ii) establishes the parameters for accrediting agencies to determine whether institutions establish reasonable equivalences for the amount of work in paragraph (1) of the credit-hour definition within the framework of

acceptable institutional practices at comparable institutions of higher education.

We believe that it is necessary to include § 602.24(f)(1)(ii) in the regulations, rather than solely in the Department's "Guidelines for Preparing/Reviewing Petitions and Compliance Reports." The regulations provide the requirements for accrediting agencies recognized by the Secretary whereas the "Guidelines for Preparing/Reviewing Petitions and Compliance Reports" provides guidance to accrediting agencies seeking the Secretary's recognition and does not have the force of regulations. We will rely upon the accrediting agencies to choose the methods used to evaluate institutions' processes for assigning credit hours.

Changes: None.

Comment: One commenter expressed concern that the reference to "commonly accepted practice in higher education" in proposed § 602.24(f)(1)(ii) may require institutions that primarily use clock hours to adopt credit-hour assignment policies that were developed by traditional four-year degree granting institutions, but are unsuitable for specialized institutions.

Discussion: The reference to "commonly accepted practice in higher education" in § 602.24(f)(1)(ii) is not a requirement for clock-hour institutions to convert to credit hours.

Changes: None.

Notification Requirements

Comment: Several commenters opposed proposed § 602.24(f)(4) that would require an accrediting agency, that identifies noncompliance with the agency's policies regarding an institution's credit assignments during a review under proposed § 602.24(f), to notify the Secretary of the identified deficiencies. A few commenters believed that proposed § 602.24(f)(4) lacked due process provisions. Some of these commenters believed that the notification requirement would force accrediting agencies to report minor or trivial credit-hour problems to the Department. One commenter believed that institutions would not be afforded an opportunity to respond to allegations or attempt immediate corrective actions which may lead to delayed resolutions to credit assignment problems.

A few commenters believed that proposed § 602.24(f)(4) was redundant with regard to the existing notification requirements in § 602.27. These commenters suggested removing proposed paragraph § 602.24(f)(4) and cross-referencing § 602.27.

One commenter believed that proposed § 602.24(f)(4) contradicts the requirements of proposed § 602.24(f)(3) which requires an accrediting agency to take appropriate action to address any institutional deficiencies it identifies as part of its review under proposed § 602.24(f)(1)(i).

A few commenters believed that the terms "systemic noncompliance" and "significant noncompliance" in proposed § 602.24(f)(4) need clarification. One commenter suggested specifying that if an accrediting agency has any reason to believe that an institution is failing to meet its title IV, HEA program responsibilities, or is engaged in fraud or abuse, then that agency must notify the Department in accordance with existing regulations. Another commenter suggested specifying that if an accrediting agency determines that an institution does not develop and adhere to an acceptable credit assignment policy, then the agency must promptly notify the Secretary. This commenter also suggested that because institutions will be developing new credit policies, they should be afforded an adjustment period to receive and react to guidance from accrediting agencies on their credit assignment policies prior to being reported to the Secretary.

Discussion: We agree with the commenters that § 602.24(f)(4) does not specify due process provisions for institutions. Section 602.24(f)(4) only requires an accrediting agency to report its findings and an agency's process of establishing and reporting a finding will rely upon the agency's own procedures. The Secretary recognition process ensures that accrediting agency procedures provide due process. Further, we believe § 602.24(f)(4) is needed because it corresponds to the provisions in § 602.27 that require an accrediting agency to submit information upon request from the Secretary about an accredited or preaccredited institution's compliance with its title IV, HEA program responsibilities. The provisions in § 602.24(f)(4) specify the agency's existing responsibility under § 602.27 with regard to inappropriate institutional processes for assigning credits.

We do not agree with the commenter who believed that § 602.24(f)(3) and (f)(4) is contradictory. The provisions in § 602.24(f)(3) require an accrediting agency to take appropriate action to address any institutional deficiencies it identifies as part of its review under § 602.24(f)(1)(i). Section 602.24(f)(4), however, requires an accrediting agency to notify the Secretary of any severe deficiencies such as systemic or significant noncompliance with the agency's policies identified at an institution during a review under § 602.24(f).

The terms "systemic noncompliance" and "significant noncompliance" do not encompass trivial or minor deficiencies. The term "systemic noncompliance" refers to an institutional process for awarding credits that is fundamentally flawed with regard to assigning credit hours in accordance with the credit-hour definition in § 600.2 and its accrediting agencies policies. The term "significant noncompliance" refers to institutional assignment of credit hours to individual courses or programs that are particularly egregious with regard to the compliance with § 600.2.

We do not believe that it is necessary to delay the effective date of the definition of a credit hour in § 600.2 or § 602.24(f) in these final regulations. An institution must implement the definition of a credit hour regardless of whether its accrediting agency has issued guidance on the implementation of § 602.24(f). While an accrediting agency is required to implement § 602.24(f) effective July 1, 2011, we will review on a case-by-case basis, based on an adequate justification as determined by the Secretary, any reasonable request from an accrediting agency for a delayed implementation date.

Changes: None.

State Agency Procedures (§ 603.24(c))

General

Comment: Several commenters opposed proposed § 603.24(c). A few commenters believed that the proposed provisions would be confusing for State agencies and that State agencies do not have the administrative capabilities to review institutions' credit-hour policies. One commenter believed that the proposed provisions would lead to inconsistencies and inequalities between States based on States' reviews of institutions' credit policies and enforcement of institutions' compliance with the proposed credit-hour definition at § 600.2.

One commenter believed that some State agencies, such as those in Iowa, would not be able to comply with proposed § 603.24(c) because the agencies may operate within the defined scope authorized by the State code and compliance would require changes in State law. This commenter also believed that some State agencies would not have the expertise to evaluate institutions' credit policies.

One commenter suggested specifying that if a State agency determines that an institution does not develop and adhere to an acceptable credit assignment

policy, the agency must promptly notify the Secretary.

One commenter believed that with regard to proposed § 603.24(c)(2), it would be appropriate for a State agency to review a sample of an institution's curriculum to determine whether the credit assignment policies were being appropriately applied by an institution, but it would not be appropriate for a State agency to employ an unspecified sample of other institutions to determine whether the credits awarded for a particular course or program conformed to commonly accepted practice in higher education. This commenter suggested revising proposed § 603.24(c)(1) to require State agencies to evaluate an institution's assignment of credit hours based on a comparative study of similar institutions, and to revise proposed § 603.24(c)(2) to specify that the agency must sample courses within an institution's program of study.

Discussion: We do not agree with the commenters who believed that State agencies subject to the recognition criteria in 34 CFR part 603 will be confused by § 603.24(c) or will lack the administrative resources to meet these requirements. To be subject to § 603.24(c), a State agency must be an agency recognized by the Secretary under 34 CFR part 603 as a reliable authority regarding the quality of public postsecondary vocational education in its State. The only States that currently have recognized State agencies under 34 CFR part 603 are New York, Pennsylvania, Oklahoma, and Puerto Rico.

As with accrediting agencies that are recognized by the Secretary, we do not believe it is necessary to define the specific methods that State agencies recognized by the Secretary should use to evaluate institutions' processes for assigning credit hours.

We believe that § 603.24(c)(4) provides the necessary level of specificity with regard to a recognized State agency's notification to the Secretary in case of institutional noncompliance with the credit-hour definition in § 600.2.

Changes: None.

Program Eligibility: Clock-to-Credit-Hour Conversion (§ 668.8)

Comment: One commenter questioned whether it is necessary to have a clock-to-credit-hour conversion if a credit hour is defined in the regulations and accrediting agencies are required to review institutional policies for awarding credits to ensure compliance. Two commenters believed that proposed §§ 600.2 and 668.8(l) define a credit hour in two different ways and are therefore inconsistent. These commenters believed that it is illogical to define credit hours for purposes of the title IV, HEA programs in different ways depending on whether or not a program is subject to the clock-hour-to-credit-hour conversion.

Discussion: On October 1, 1990, the Secretary published proposed regulations (55 FR 40148–40150) to establish standards for clock-to-credit-hour-conversion for undergraduate vocational training programs and on July 23, 1993, the Secretary published final regulations (58 FR 39618–39623) based on the public comments. The Secretary published the regulations to address significant abuse in the title IV, HEA programs, citing, for example, a 309 clock-hour program that was converted to a 27.7 quarter-credit program. We believe that the potential for such abuse continues to exist and that § 668.8(k) and (l) continues to be essential to the administrative integrity of the title IV, HEA programs. In § 668.8(l)(2) of the final regulations, we have included consideration by an institution's accrediting agency of the institution's policies and procedures, and their implementation, for determining credit hours in a program if an institution seeks to establish any conversions that are less than the conversion rate specified in § 668.8(l)(1).

Due to the separate conversion formula in new § 668.8(l), programs that are subject to the clock-to-credit-hour conversion in § 668.8(l) are exempted from using the credit-hour definition in § 600.2. Therefore, we do not believe there is any inconsistency between the definition in § 600.2 and the provisions of § 668.8(l).

Changes: None.

Comment: One commenter asked for clarification regarding whether an institution that was recently approved for a degree program must wait for students to graduate from the program before it utilizes the exemption, in proposed § 668.8(k)(1)(ii), from the requirements to perform a clock-to-credit-hour conversion under the provisions in proposed § 668.8(l) with regard to students in a diploma program in which all credits are fully transferable to the new degree program.

Discussion: Section 668.8(k)(1)(ii) provides that an institution's shorter length program is not subject to the conversion formula in § 668.8(l) if each course within the shorter program is acceptable for full credit toward a degree that is offered by the institution that requires at least two academic years of study. Additionally, under § 668.8(k)(1)(ii), an institution would be required to demonstrate that students enroll in, and graduate from, the longer length degree program. Thus, for a recently approved degree program that is at least two academic years in length, an institution must use clock hours for its title IV, HEA programs that are fully accepted for transfer into the new degree program until students graduate from the new degree program unless the institution offers other degree programs, each with graduates, and all the coursework in the first year of the program is acceptable for full credit toward one or more of these other degree programs. After students graduate from the new degree program, the programs at the institutions that are fully accepted for transfer into the new degree program will qualify under the exception in § 668.8(k)(1)(ii). We believe that it is essential that an institution is able to demonstrate that students graduate from the longer length degree program to ensure that the exception provided in § 668.8(k)(1)(ii) is being appropriately applied. We note that in an instance where a student is enrolled in a new degree program in which the first year of study may lead to a certificate or diploma and the second year provides an associate's degree, any student in the first year must have eligibility for title IV, HEA programs determined on a clock-hour basis until students graduate from the program with a degree after completing the second year.

Changes: None.

Comment: Several commenters did not agree with the provisions in proposed § 668.8(k)(2)(i)(A) and (B), which provide for when a program is required to measure student progress in clock hours.

Two commenters believed that if an institution's State licensing board or accrediting agency approve a credential to be awarded in credit hours, then that approval should be sufficient to award title IV, HEA program funds based on credit hours. These commenters believed that the provisions in § 668.8(k)(2)(i)(A) and (B) create an unnecessary duplication of services provided by these approving entities. One commenter believed that this provision would be detrimental to institutions that have received licensing, accrediting, or Federal approval to use credit hours because these institutions would need to convert to clock hours.

A few commenters believed that proposed § 668.8(k)(2)(i)(A) is unclear on the requirement to measure student progress in clock hours. These commenters believed that State agencies' disclosure and calculation requirements may involve clock hours

but do not necessarily require that an institution measure student progress in clock hours. These commenters recommended revising proposed § 668.8(k)(2)(i)(A) so that an institution is not required to measure student progress in clock hours unless the Federal or State authority requires the institution to measure student progress exclusively in clock hours. One commenter believed that many accrediting agencies and State agencies require institutions to include a clock-to-credit-hour conversion rate as part of the new program submission process, but it is not the agencies' intent to consider these credit-hour programs as clock-hour programs. The commenter suggested adding a provision to proposed § 668.8(k)(2)(i)(A) so that it does not apply to institutions that are required to include a clock-to-credit-hour conversion rate in their accrediting agency or State application for a new program.

One commenter believed that accrediting agencies' standards vary with regard to requirements for programs offering a certain number of clock hours in order for a graduate to be eligible to take a certification or licensure exam and students' requirement to attend the programs' clock hours. This commenter believed that there should be no requirement for a program to be a clock-hour program unless an accrediting agency specifies that students must attend the clock hours to take the certification or licensure exam.

A few commenters believed that credit-hour programs are more recognized by employers and institutions. These commenters believed that it is difficult for students in clock-hour programs to transfer to credit-hour programs. The commenters also believed that employer-paid or employer-reimbursed tuition programs are generally administered based on credit hours.

One commenter believed that the proposed clock-to-credit-hour conversion provisions that only use credit hours were not consistent concerning States throughout the proposed regulations.

Discussion: The provisions in § 668.8(k)(2)(i)(A) provide that a program must be considered a clock-hour program for title IV, HEA program purposes if the program is required to measure student progress in clock hours for Federal or State approval or licensure. We believe that any requirement for a program to be measured in clock hours to receive Federal or State approval or licensure, and any requirement for a graduate to complete clock hours to apply for licensure or authorization to practice an occupation demonstrates that a program is fundamentally a clock-hour program, regardless of whether the program has received Federal, State, or accrediting approval to offer the program in credit hours. As clock-hour programs, these programs are required to measure student progress in clock hours for title IV, HEA program purposes. In these circumstances where a requirement exists for the program to be measured in clock hours, this becomes the fundamental measure of that program for title IV, HEA program purposes. This outcome is not changed for such a program when an institution's State licensing board or accrediting agency also allows the institution to award a credential based upon credit hours, or when a State licensing board may require that a program be measured in clock hours but the program is approved by the institution's accrediting agency in credit hours. Further, because the institution is already required to report or otherwise establish the underlying clock hours of a program, we do not agree that provisions in § 668.8(k)(2)(i)(A) and (B) create an unnecessary duplication of services provided by these approving entities. We also do not believe that using clock hours for title IV, HEA program purposes will be detrimental to institutions that have received licensing, accrediting, or Federal approval to use credit hours for academic purposes. In the case of institutions that are required to include a clock-to-credit-hour conversion rate in their accrediting agency or State application for a new program, we do not believe those accrediting agency or State requirements would affect the application of the provisions of § 668.8(k)(2)(i)(A) and (B) because the institution is clearly required to establish the clock hours in the program to receive approval.

With regard to the commenters who believed that credit-hour programs are more recognized and accepted by employers and institutions, there are no provisions in § 668.8(k) and (l) that would prevent a program that must be considered a clock-hour program for title IV, HEA program purposes from also being offered in credit hours for academic or other purposes. We agree there was an inconsistency in proposed § 668.8(l)(2) with State requirements. Proposed § 668.8(l)(2) incorrectly referred to an institution's relevant State licensing authority when it should have referred to an institution's recognized State agency for the approval of public postsecondary vocational institutions that approves the institution in lieu of accreditation by a nationally recognized accrediting agency. This has been corrected.

Changes: Section 668.8(l)(2) has been modified to remove the reference from proposed § 668.8(l)(2) to an institution's relevant State licensing authority and now refers to an institution's recognized State agency for the approval of public postsecondary vocational institutions.

Comment: Several commenters did not agree with proposed § 668.8(k)(2)(iii) that provides that an institution must require attendance in the clock hours that are the basis for credit hours awarded, except as provided in current § 668.4(e).

Some of these commenters questioned the effect this provision would have on institutions' attendance policies and asked that the Department clarify whether institutions are required to take attendance and have attendance policies that prohibit students from having absences. Two commenters believed that institutions would be required to take attendance in clock hours and credit hours. A few commenters noted that institutions that recently converted to systems using credit hours instead of clock hours, but that do not take attendance, would be particularly burdened.

A few commenters believed that the Department did not address how institutions should handle typical classroom absences or extended leaves of absence when calculating clock hours completed or converting credit hours to clock hours. One commenter expressed concern that this provision in proposed § 668.8(k)(2)(iii) would decrease institutions' ability to address students' needs in regard to absences. A few commenters asked whether a student must attend 100 percent of the clock hours in a course in order to receive credit for the course.

One commenter believed that the proposed provision is impractical because most institutions use a 50-minute instructional hour instead of a 60-minute clock hour. This commenter also believed that the provision was unclear on whether the relevant clock hours would be considered to be provided if no instructor appeared for the clock hour.

One commenter believed that the Department should clearly state in the final regulations that § 668.8(k)(2)(iii) is not intended to be a test of the reasonable equivalencies that institutions can develop with regard to determining credit hours as that term is defined in proposed § 600.2.

Discussion: We believe it is essential for an institution to require students to

complete the clock hours that are the basis for the credit hours awarded in a program even when an institution converts a program to credit hours under the provisions of § 668.8(k) and (l). These programs are still required to contain the clock hours that support the conversion under the regulations, and institutions are expected to make sure that those clock hours are completed by the students, subject to the institution's existing policies for excused absences and make-up classes.

We do not agree with the commenters who believe that § 668.8(k)(2)(iii) does not provide for excused absences or would require 100 percent attendance, because the regulations for clock hour programs already account for excused absences. Section 668.8(k)(2)(iii) specifically accounts for excused absences in accordance with the current regulations in § 668.4(e) which provides guidance on when an institution, in determining whether a student has successfully completed the clock hours in a payment period, may include clock hours for which the student has an excused absence. An institution should ensure that students taking a program in credit hours are still completing the clock hours associated with the conversion, and excused absences from the classes should be within the tolerance permitted in the clock hour regulations. With regard to a leave of absence, an institution is expected to ensure that a student returning from an approved leave of absence still completes the clock hours that are needed to support the conversion for the program.

We do not agree with the commenter who believed that § 668.8(k)(2)(iii) is impractical because most institutions use a 50-minute instructional hour instead of a 60-minute clock hour. A clock hour is currently defined in § 600.2 as (1) a 50- to 60-minute class, lecture, or recitation in a 60-minute period; (2) a 50- to 60-minute faculty-supervised laboratory, shop training, or internship in a 60-minute period; or (3) sixty minutes of preparation in a correspondence course. We also do not agree with this commenter's belief that the provision is unclear on whether the relevant clock hours would be considered to be provided if no instructor appeared for the clock hour. If a student is unable to complete a clock hour because the instructor is not present, there is no clock hour to be counted towards meeting the required clock hours unless it may be counted as an approved absence.

Changes: None.

Comment: One commenter believed that the Department should clearly state in the final regulations that § 668.8(k)(2)(iii) is not intended to be a test of the reasonable equivalencies that institutions can develop with regard to determining credit hours as that term is defined in § 600.2.

Discussion: We do not believe it is necessary to amend § 668.8(k)(2)(iii) to state that the provision is not intended to be a test of the reasonable equivalencies that institutions can develop with regard to determining credit hours as defined in § 600.2. The credit-hour definition in § 600.2 specifically excludes its applicability to a program subject to the conversion formula in § 668.8(l).

Changes: None.

Comment: Many commenters believed that proposed § 668.8(l) would decrease students' eligibility for title IV, HEA program funds. These commenters believed that students enrolled in short-term and nondegree programs measured in credit hours would unjustly experience a decrease in their eligibility for title IV, HEA program funds because the proposed clock-to-credit-hour conversion would require institutions to use 900 clock hours instead of the current 720 clock hours to support the same amount of credit hours.

These commenters believed that students' decreased eligibility would force them to withdraw from short-term and nondegree programs or rely on loans which would increase their debt. One of these commenters expressed concern that the decreased eligibility for title IV, HEA program funds would disproportionately impact nontraditional and financially disadvantaged students.

Discussion: We do not agree with the commenters who believed that students currently enrolled in short-term or nondegree programs would unjustly experience a decrease in their eligibility for title IV, HEA program funds nor do we believe that the conversion formula inappropriately impacts students' title IV, HEA program eligibility. We do not believe that the clock-to-credit-hour conversion rate in current § 668.8(l) provides equitable outcomes for students taking similar programs measured in clock-hours and credit hours. The current regulations result in students in some credit hour programs having greater eligibility based on a conversion from clock hours to credit hours that assumed student work outside of class is always present in the same ratio to the time the students spend in class. The changes to the conversion formula in § 668.8(l) of these final regulations provide for a more equitable accounting for student work outside of class. New § 668.8(l)(2) would provide for conversion based on the varying rates of work outside class for particular educational activities within a student's courses or program rather than mandating the use of a constant ratio that may be incorrect. An institution applying the appropriate conversion rate to a program in accordance with § 668.8(l)(1) would be considered compliant with § 668.8(l).

Changes: None.

Comment: Many commenters believed that the proposed clock-to-credit-hour conversion formula would force institutions to increase the lengths of their programs or offer associate's degrees in order to retain their eligibility for title IV, HEA program funds. Several of these commenters believed that increasing program lengths would cause financial hardships for students by delaying students' entry into workforce and increasing tuition. A few commenters believed that many programs would be potentially eliminated because of the institutional burden of unnecessarily extending program lengths.

Discussion: We do not agree with these commenters. Under the current regulations in § 668.8(d), public and private nonprofit institutions and proprietary institutions offering undergraduate programs may have eligible programs with a minimum of 600 clock hours, 16 semester or trimester hours, or 24 quarter hours. To the extent that any short-term programs would not have been eligible for title IV, HEA program funds in the past due to the inequitable clock-to-credit-hour conversion rate, we believe that students enrolled in these programs should not have been eligible for title IV, HEA program funds. Short-term programs offered in credit hours that contained outside work that met or exceeded the assumed outside work that was implicit in the conversion should be in compliance with the new requirements and unaffected by the change.

Changes: None.

Comment: A few commenters questioned how proposed § 668.8(l) would affect institutional credit policies. One commenter believed that programs that were designed to be compliant with the clock-to-credit-hour conversion ratio for a semester hour in current § 668.8(l) cannot be easily or quickly changed because using the ratio alters the delivery, design, and curricular structure of the programs.

One commenter requested clarification of how the conversion should be applied when one program has courses that require outside work and other courses that do not.

Discussion: We do not believe that it is necessary for programs to change their structure or credit assignments for academic purposes if they are subject to the conversion formula in new § 668.8(l); however, institutions are responsible for ensuring that the credit hours awarded for title IV, HEA program purposes comply with the provisions in § 668.8(l). In some instances, there may be no discernable difference between institutions' determinations of credit hours for academic purposes and title IV, HEA program purposes depending on the outcome of determinations of work outside of class and instructional periods within a program. Some institutions may currently award fewer credits then the existing regulations allow or would be allowed under the final regulations.

The provisions in § 668.8(l)(2) provide an exception to the minimum standard for converting clock hours to credit hours in § 668.8(l)(1) for coursework in a program that qualifies for a lesser rate of conversion based on additional student work outside of class. In a case where a program offers courses with work outside of class, an institution must use the standards in § 668.8(l)(1) for the courses without the work outside of class and may apply the exception in § 668.8(l)(2) to courses with work outside of class.

Changes: None.

Comment: One commenter supported proposed § 668.8(l)(2) because it provides institutions the ability to account for work outside of class. One commenter supported the provision, but recommended that the Department specify when an institution is eligible to use work outside of class as part of the total clock-hour calculation.

A few commenters asked for clarification regarding proposed § 668.8(l)(2) and the work outside of class that may be combined with clock hours of instruction in order to meet or exceed the numeric requirements established in § 668.8(l)(1). These commenters requested clarification on how institutions should measure student's completion of work outside of class, whether work outside of class should be identified in course syllabi, whether work outside of class should be graded, and what entity should determine that a program is suited to include work outside of class.

Discussion: Under § 668.8(l)(2), an institution may use a determination of appropriate amounts of work outside of class for various educational activities in a course or program in determining the appropriate conversion rate from clock hours to credit hours for each educational activity in the course or program. However, we do not believe that it is appropriate for the Department to provide more specificity for determining the appropriate conversion rates for various educational activities in a course or program. An institution, in accordance with the requirements of its designated accrediting agency, or State agency for the approval of public postsecondary vocational institutions, recognized under 34 CFR 603, is responsible for making determinations of the appropriate credit hours under proposed § 668.8(l)(2). If an institution is unsure of how to apply the provisions of § 668.8(l)(2) to a program, it would be considered compliant if it uses the appropriate conversion ratio specified in § 668.8(l)(1).

Changes: None.

Comment: One commenter suggested eliminating the provision in proposed § 668.8(k)(2)(ii) that requires institutions to measure student progress in clock hours in any program if the credit hours awarded for the program are not in compliance with the definition of credit hour in § 600.2. The commenter believed the Secretary's proposed credit-hour definition in § 600.2 allowed the Secretary to interfere in academic matters.

Discussion: The definition of credit hour in § 600.2 is intended to establish a quantifiable, minimum basis for a credit hour for Federal program purposes, including the title IV, HEA programs. We believe that it is necessary to establish the standards by which a program that awards credit hours that are not in compliance with the definition of credit hour in § 600.2 may still be eligible for title IV, HEA program funds. Thus, § 668.8(k)(2)(ii) provides that a program that does not award credit hours in compliance with § 600.2 may still be eligible for title IV, HEA programs using the underlying clock-hours of the program.

Changes: None.

Comment: A few commenters requested clarification on how to address students that are already enrolled in programs that may change the measurement of student progress to comply with proposed § 668.8(k) and (l). A few of these commenters also requested additional time to comply with the proposed regulations in these sections. One commenter requested that current students should be permitted to complete their programs using the current conversion ratio. One commenter asked that the Secretary allow institutions that offered credit-hour programs in the 2010–11 academic year, but will need to measure student progress in clock hours under proposed § 668.8(k)(2)(i)(B), to continue measuring student progress in these programs using credit hours.

One commenter asked whether institutions are required to execute revised Enrollment Agreements with currently enrolled students when the new regulations take effect.

One commenter suggested that the conversation rate in § 668.8(l) should not be applied to existing programs for at least one year from July 1, 2011 to allow for accrediting agencies to create procedures for assessing institutions' assignment of credit hours. This commenter added that only new programs should be required to use the proposed conversion rate.

One commenter requested that the proposed provisions in § 668.8(l)(2)(i) not take effect for two award years in order for institutions that use clock hours to have time to redesign their programs.

Discussion: We agree with the commenters' concerns regarding the applicability of the changes to § 668.8(k) and (l) to students enrolled prior to the effective date of these regulations in programs affected by the changes in the requirements. We agree that for students enrolled in programs subject to the provisions in § 668.8(k) and (l) as of the July 1, 2011 effective date of these final regulations, an institution may choose to apply the regulations in current § 668.8(k) and (l) until these students complete the program or to apply amended § 668.8(k) and (l) in these final regulations for all students enrolled in payment periods or assigned to the 2011–12 and subsequent award years. For students who enroll or reenroll on or after July 1, 2011 in programs affected by changes in § 668.8(k) and (l), institutions must determine title IV, HEA eligibility using § 668.8(k) and (l) in these final regulations.

We do not agree that a delay in the effective date is needed for institutions to allow institutions more time to bring their existing programs into compliance. If an institution's accrediting agency, or State agency, is not yet compliant with the provisions of § 602.24(f) for an accrediting agency, or § 603.24(c) for a State agency, the institution must use the conversion formula in § 668.8(l)(1) of these final regulations until the State agency and accrediting agency are compliant.

Changes: None.

State Authorization (§§ 600.4(a)(3), 600.5(a)(4), 600.6(a)(3), 600.9, and 668.43(b))

General—No Mandate for a State Licensing Agency

Comment: Several commenters believed the proposed regulations would create mandates for States to create new State oversight bodies or licensing agencies, or compel States to create bureaucratic structures that would further strain higher education resources. Some commenters believed that a majority of the States would have to modify licensing requirements or adopt new legislation and that the regulations would cause a major shift in State responsibility.

Discussion: These final regulations do not mandate that a State create any licensing agency for purposes of Federal program eligibility. Under the final regulations, an institution may be legally authorized by the State based on methods such as State charters, State laws, State constitutional provisions, or articles of incorporation that authorize an entity to offer educational programs beyond secondary education in the State. If the State had an additional approval or licensure requirement, the institution must comply with those requirements. In the case of an entity established as a business or nonprofit charitable organization, *i.e.,* not as an educational institution, the entity would be required to have authorization from the State to offer educational programs beyond secondary education. While these final regulations require the creation of a State licensing agency, a State may choose to rely on such an agency to legally authorize institutions to offer postsecondary education in the State for purposes of Federal program eligibility.

Changes: None.

Comment: Several commenters supported the proposed regulations as an effort to address fraud and abuse in Federal programs through State oversight. An association representing State higher education officials noted that despite differences in State practice, all the States, within our Federal system, have responsibilities to protect the interests of students and the public in postsecondary education and supported the basic elements of proposed § 600.9. A State agency official praised the Department's proposed regulations but suggested that the Department insert "by name" in the proposed § 600.9(a)(1) to provide some protection against recurrence of situations such as the one in California when the State licensing agency lapsed prior to the State renewing the agency or a successor to the agency and no State approval was in place that named an institution as licensed or authorized to operate in the State.

Discussion: We appreciate the support of the commenters. We agree with the commenter that a State's authorization should name the institution being authorized. We believe that by naming the institution in its authorization for the institution to offer postsecondary education in the State, the State is providing the necessary positive authorization expected under § 600.9.

Changes: We are amending proposed § 600.9, where appropriate, to recognize that an institution authorized by name in a State will meet the State authorization requirements as discussed further in response to other comments.

Comment: Some commenters believed that the proposed regulations exceeded the Department's authority and infringed on the States' authority. One commenter requested that the proposed regulations be eliminated because private institutions are authorized through various unique authorizations. Another commenter believed that the proposed regulations upset the balance of the "Triad" of oversight by States, accrediting agencies, and the Federal Government. One commenter questioned whether the Department could impose conditions restricting a State's freedom of action in determining which institutions are authorized by the State by requiring that a State's authorization must be subject to, for example, adverse actions and provision for reviewing complaints. The commenter believed that there was no intent to have the Department impose such conditions. Another commenter believed that proposed § 600.9 unnecessarily intruded on each State's prerogative to determine its own laws and regulations relative to the authorization of higher education institutions and to define the conditions for its own regulations. One commenter suggested that the Department only apply proposed § 600.9 to the problem areas that the commenter identified as substandard schools, diploma mills, and private proprietary institutions.

One commenter believed that the proposed regulations would infringe upon the States' sovereignty by commanding state governments to implement legislation enacted by Congress. Specifically, the commenter noted that under the proposed regulations the States must adopt legislation or rules that expressly authorize institutions to offer postsecondary programs and further make such an authorization subject to adverse action by the State and that the proposed regulations would require that States establish a process to act on complaints about the institution and enforce State laws against the institution. The commenter believed that the Department would improperly direct State officials to participate in the administration of a federally enacted regulatory scheme in violation of State Sovereignty. By doing so, the commenter believed that the Federal Government would be forcing State governments to absorb the financial burden of implementing a Federal regulatory program, while allowing the Federal government to take credit for "solving" problems without having to ask their constituents to pay for the solutions with higher Federal taxes. The commenter believed that the Department cannot construe the HEA to require a State to regulate according to the Department's wishes. The commenter believed that such a construction would exceed the Department's authority under the HEA and violate the States' rights under the Tenth Amendment.

Discussion: We disagree with the commenters that the proposed regulations exceed the Department's authority and infringe on States' authority. Under the provisions of the HEA and the institutional eligibility regulations, the Department is required to determine whether an institution is legally authorized by a State to offer postsecondary education if the institution is to meet the definition of an institution of higher education, proprietary institution of higher education, or postsecondary vocational institution (20 U.S.C. 1001 and 1002) as those terms are defined in §§ 600.4, 600.5, and 600.6 of the institutional eligibility regulations. In accordance with the provisions of the HEA, the Department is establishing minimum standards to determine whether an institution is legally authorized to offer postsecondary education by a State for purposes of Federal programs. The proposed regulations do not seek to regulate what a State must do, but instead considers whether a State authorization is sufficient for an institution that participates, or seeks to participate, in Federal programs.

Contrary to the commenter's suggestion that the Department is upsetting the Triad, we believe these regulations clarify the role of the States, a key participant in the Triad, in establishing an institution's eligibility for Federal programs. Further, the Department believes that clarifying the State role in the Triad will address some of the oversight concerns raised by

another commenter regarding problem areas with certain types of institutions.

Changes: None.

Comment: Several commenters questioned the need for proposed § 600.9. For example, several commenters questioned whether the Department's concern that the failure of California to reinstate a State regulatory agency was justified. Commenters believed that the regulations would not have prevented the concerns the Department identified in the case of the lapsing of the California State agency. One commenter believed the California issue was resolved and that accreditation and student financial aid processes worked. Some commenters believed that the current State regulatory bodies or other authorization methods were sufficient. One commenter stated that authorizations are spelled out in State statutes, and there is no need for the regulations. Some commenters believed that additional information is needed, such as a State-by-State review of the impact of proposed § 600.9, or the States with adequate or inadequate oversight. Several commenters were concerned that proposed § 600.9 would unnecessarily impact small States without discernable problems. Some commenters believed there is no evidence of marginal institutions moving to States with lower standards and that there is no danger to title IV, HEA program funds. One commenter believed that proposed § 600.9 should be eliminated because the commenter believed that its full effect is not known and that it will be chaotic if implemented. Another commenter believed that proposed § 600.9 would be burdensome, is not economically feasible, and would leave an institution at the mercy of the State. One commenter believed that proposed § 600.9 would encourage for-profit institutions to undermine State agencies such as through lobbying to underfund an agency and would stall reconsideration of legislation.

Some commenters believed that the Department's concerns were valid. One of these commenters believed that, in the absence of regulations, many States have forfeited their public responsibilities to accrediting agencies. In the case of the interim lapse of the State regulatory agency in California, the commenter believed that we do not know yet the extent of the mischief that may have occurred or may still occur, but the commenter has received reports that schools began operating in the gap period and are being allowed to continue to operate without State approval until the new agency is operational. The commenter understood that at least one of those schools closed abruptly, leaving many students with debts owed and no credential to show for their efforts.

Some commenters believed that the proposed regulations would not address issues with degree mills as they are not accredited. Some commenters urged the Department to offer leadership and support of Federal legislation and funding to combat diploma mills.

One commenter recommended that the Department use Federal funds for oversight. Another commenter suggested that the Department encourage the Federal Government to provide incentives to the States.

Discussion: We do not agree with the commenters who believe that proposed § 600.9 should be eliminated. For example, we believe these regulations may have prevented the situation in California from occurring or would have greatly reduced the period of time during which the State failed to provide adequate oversight. While it may appear that the California situation was satisfactorily resolved as some commenters suggested, the absence of a regulation created uncertainty. As one commenter noted, during the period when the State failed to act, it appears that problems did occur, and that no process existed for new institutions to obtain State authorization after the dissolution of the State agency. We are concerned that States have not consistently provided adequate oversight, and thus we believe Federal funds and students are at risk as we have anecdotally observed institutions shopping for States with little or no oversight. As a corollary effect of establishing some minimal requirements for State authorization for purposes of Federal programs, we believe the public will benefit by reducing the possibilities for degree mills to operate, without the need for additional Federal intervention or funding. We do not believe that additional information is needed to support § 600.9 in these final regulations as § 600.9 only requires an institution demonstrate that it meets a minimal level of authorization by the State to offer postsecondary education. Because the provisions of § 600.9 are minimal, we believe that many States will already satisfy these requirements, and we anticipate institutions in all States will be able to meet the requirements under the regulations over time. This requirement will also bring greater clarity to State authorization processes as part of the Triad. Since the final regulations only establish minimal standards for institutions to qualify as legally authorized by a State, we believe that, in most instances they do not impose significant burden or costs. States are also given numerous options to meet these minimum requirements if they do not already do so, and this flexibility may lead to some States using different authorizations for different types of institutions in order to minimize burden and provide better oversight. The question of whether these regulations will impact the ability of any group to seek changes to a State's requirements is beyond the purview of these final regulations. As one commenter requested, we will continue to support oversight functions as provided under Federal law, and we believe that these final regulations will provide the necessary incentives to the States to assure a minimal level of State oversight.

Changes: None.

Comment: Some commenters questioned how the Department would enforce the proposed regulations. One commenter stated that the Department has no mechanism to enforce the proposed regulations and asks how they will improve program integrity. One commenter questioned why an institution may be held accountable for the actions of the State over which it has no direct control.

Discussion: Any institution applying to participate in a Federal program under the HEA must demonstrate that it has the legal authority to offer postsecondary education in accordance with § 600.9 of these final regulations. If a State declines to provide an institution with legal authorization to offer postsecondary education in accordance with these regulations, the institution will not be eligible to participate in Federal programs.

As to an institution's inability to control the actions of a State, we do not believe such a circumstance is any different than an institution failing to comply with an accreditation requirement that results in the institution's loss of accredited status. We believe that in any circumstance in which an institution is unable to qualify as legally authorized under § 600.9 of these final regulations, the institution and State will take the necessary actions to meet the requirements of § 600.9 of these final regulations.

Changes: None.

Comment: One commenter believed that proposed § 600.9 would result in an unfunded mandate by the Federal Government. Another commenter stated that many States may see proposed § 600.9 as a revenue-generating opportunity and pass the costs of this requirement on to institutions, which

would have no choice but to pass that cost on to students.

Discussion: We do not agree that § 600.9 of these final regulations will result in an unfunded mandate by the Federal Government, since many States will already be compliant and options are available that should permit other States to come into compliance with only minimal changes in procedures or requirements if they want to provide acceptable State authorizations for institutions. The regulations also include a process for an institution to request additional time to become compliant. Furthermore, if a State is unwilling to become compliant with § 600.9, there is no requirement that it do so. We also do not agree that States will see coming into compliance with § 600.9 as a revenue-generating opportunity, since any required changes are likely to be minimal.

Changes: None.

Implementation

Comment: Some commenters believed that the proposed regulations are ambiguous in meaning and application or are vague in identifying which State policies are sufficient. For example, one State higher education official suggested that proposed § 600.9 should be amended to differentiate among authorities to operate arising from administrative authorization of private institutions from legislation and from constitutional provisions assigning responsibility to operate public institutions. The commenter believed that proposed § 600.9 obfuscated the various means of establishing State authorization and the fundamental roles of State legislatures and State constitutions and recommended that these means of authorization and roles of State entities should be clarified.

Several commenters questioned what authorizing an institution to offer postsecondary programs entails. A few commenters pointed out that there is a wide array of State approval methods and many institutions were founded before the creation of State licensing agencies. An association representing State higher education officials urged that ample discretionary authority explicitly be left to the States. One commenter indicated that proposed § 600.9 failed to address when more than one State entity is responsible for a portion of the oversight in States where dual or multiple certifications are required. Another commenter believed that proposed § 600.9 did not adequately address the affect an institution's compliance with proposed § 600.9 would have if one of two different State approvals lapsed and both were necessary to be authorized to operate in the State or if the State ceased to have a process for handling complaints but the institutions continued to be licensed to offer postsecondary education. Some commenters asked whether specific State regulatory frameworks would meet the provisions of the proposed regulations. For example, one commenter believed that, under State law and practice in the commenter's State, the private institutions in the State already met the requirements in proposed § 600.9 that the commenter believed included: (1) The institution being authorized by a State through a charter, license, approval, or other document issued by an appropriate State government agency or State entity; (2) the institution being authorized specifically as an educational institution, not merely as a business or an eleemosynary organization; (3) the institution's authorization being subject to adverse action by the State; and (4) the State having a process to review and appropriately act on complaints concerning an institution. The commenter noted that all postsecondary institutions in the State must either have a "universal charter" awarded by the legislature or be approved to offer postsecondary programs. The commenter noted that these institutions are authorized as educational institutions, not as businesses. In another example, a commenter from another State believed that current law in the commenter's State addresses and covers many of the requirements outlined in proposed § 600.9. The commenter noted that many of the State laws are enforced by the State's Attorney General and attempt to protect individuals from fraud and abuse in the State's system of higher education. However, the commenter believed that it remained unclear whether the State would be required to create an oversight board for independent institutions like the commenter's institution or would be subject to State licensure requirements via the State licensure agency. The commenter believed that either option would erode the autonomy of the commenter's institution and add layers of bureaucracy to address issues currently covered by State and Federal laws.

One commenter suggested that proposed § 600.9(a)(1) be amended to provide that authorization may be based on other documents issued by an appropriate State government agency and delete the reference to "state entity." The commenter believed that the documents would affirm or convey the authority to the institution to operate educational programs beyond secondary education by duly enacted State legislation establishing an institution and defining its mission to provide such educational programs or by duly adopted State constitutional provisions assigning authority to operate institutions offering such educational programs.

Some commenters questioned whether there were any factors that a State may not consider when granting legal authorization. One commenter requested confirmation that under the proposed regulations authorization does not typically include State regulation of an institution's operations nor does it include continual oversight. A few commenters expressed concern regarding the involvement of the States in authorization and that a State's role may extend into defining, for example, curriculum, teaching methods, subject matter content, faculty qualifications, and learning outcomes. One commenter was concerned that proposed § 600.9 would create fiscal constraints on an institution due to, for example, additional reporting requirements or would impose homogeneity upon institutions that would compromise their unique missions. One commenter stated that the Department does not have the authority to review issues of academic freedom or curriculum content.

One commenter wanted assurances that the Department does not intend to use the proposed regulations to strengthen State oversight of colleges beyond current practices. One commenter was concerned that States could exercise greater and more intrusive oversight of private colleges.

One commenter suggested that the Department grandfather all institutions currently operating under a State's regulatory authority without a determination of its adequacy. Another indicated that private colleges and universities operating under a State-approved charter issued prior to 1972 are already subject to State regulation, even as they are exempt from State licensing. One commenter believed that the Department should accept State laws and regulations that can be reasonably interpreted as meeting the regulatory requirements.

Discussion: We agree with the commenters who were concerned that proposed § 600.9 may be viewed as ambiguous in describing a minimal standard for establishing State legal authorization. We agree, in principle, with the State higher education official who suggested that proposed § 600.9 should be amended to differentiate the

types of State authorizations for institutions to operate, but not based upon whether the source of the authorization is administrative or legislative. We believe the distinction for purposes of Federal programs is whether the legal entities are specifically established under State requirements as educational institutions or instead are established as business or nonprofit charitable organizations that may operate without being specifically established as educational institutions. We believe this clarification addresses the concerns of whether specific States' requirements were compliant with § 600.9 as provided in these final regulations.

We continue to view State authorization to offer postsecondary educational programs as a substantive requirement where the State takes an active role in authorizing an institution to offer postsecondary education. This view means that a State may choose a number of ways to authorize an institution either as an educational institution or as a business or nonprofit charitable organization without specific authorization by the State to offer postsecondary educational programs. These legal means include provisions of a State's constitution or law, State charter, or articles of incorporation that name the institution as established to offer postsecondary education. In addition, such an institution also may be subject to approval or licensure by State boards or State agencies that license or approve the institution to offer postsecondary education. If a legal entity is established by a State as a business or a nonprofit charitable organization and not specifically as an educational institution, it may be subject to approval or licensure by State boards or State agencies that license or approve the institution to offer postsecondary education. The key issue is whether the legal authorization the institution receives through these means is for the purpose of offering postsecondary education in the State.

In some instances, as one commenter noted, a State may have multiple State entities that must authorize an institution to offer postsecondary programs. In this circumstance, to comply with § 600.9, we would expect that the institution would demonstrate that it was authorized to offer postsecondary programs by all of the relevant State entities that conferred such authorizations to that type of institution.

We do not believe it is relevant that an institution may have been established prior to any State oversight. We are concerned that institutions currently be authorized by a State to offer postsecondary education, although we recognize that a State's current approval for an institution may be based on historical facts. We therefore do not believe it is necessary to grandfather institutions currently operating under a State's regulations or statutes nor are we making any determination of the adequacy of a State's methods of authorizing postsecondary education apart from meeting the basic provisions of § 600.9 in these final regulations. If a private college or university is operating under a State-approved charter specifically authorizing the institution by name to offer postsecondary education in the State, a State may exempt an institution from any further State licensure process. The requirement to be named specifically in a State action also applies if the institution is exempt from State licensure based upon another condition, such as its accreditation by a nationally recognized accrediting agency or years in operation.

Further, these regulations only require changes where a State does not have any authorizing mechanisms for institutions other than an approval to operate as a business entity, or does not have a mechanism to review complaints against institutions. We anticipate that many States already meet these requirements, and will have time to make any necessary adjustments to meet the needs of the institutions.

With regard to the commenters who were concerned with the potential scope of a State's authority, we note that the Department does not limit a State's oversight of institutions, and only sets minimum requirements for institutions to show they are legally authorized by a State to provide educational programs above the secondary level. These regulations neither increase nor limit a State's authority to authorize, approve, or license institutions operating in the State to offer postsecondary education. Further, nothing in these final regulations limits a State's authority to revoke the authorization, approval, or license of such institutions. Section 600.9 ensures that an institution qualifies for Federal programs based on its authorization by the State to offer postsecondary education.

Changes: We are amending proposed § 600.9 to distinguish the type of State approvals that are acceptable for an institution to demonstrate that it is authorized by the State to offer educational programs beyond the secondary level.

An institution is legally authorized by the State if the State establishes the institution by name as an educational institution through a charter, statute, constitutional provision, or other action to operate educational programs beyond secondary education, including programs leading to a degree or certificate. If, in addition, the State has an applicable State approval or licensure process, the institution must also comply with that process to be considered legally authorized. However, an institution created by the State may be exempted by name from any State approval or licensure requirements based on the institution's accreditation by an accrediting agency recognized by the Secretary or based upon the institution being in operation for at least 20 years.

If the legal entity is established by a State as a business or a nonprofit charitable organization and not specifically as an educational institution, the State must have a separate procedure to approve or license the entity by name to operate programs beyond secondary education, including programs leading to a degree or certificate. For an institution authorized under these circumstances, the State may not exempt the entity from the State's approval or licensure requirements based on accreditation, years in operation, or other comparable exemption.

The following chart and examples illustrate the basic principles of amended § 600.9:

MEETS STATE AUTHORIZATION REQUIREMENTS*

Legal entity	Entity description	Approval or licensure process
Educational institution	A public, private nonprofit, or for-profit institution established by name by a State through a charter, statute, or other action issued by an appropriate State agency or State entity as an educational institution authorized to operate educational programs beyond secondary education, including programs leading to a degree or certificate.	The institution must comply with any applicable State approval or licensure process and be approved or licensed by name, and may be exempted from such requirement based on its accreditation, or being in operation at least 20 years, or use both criteria.
Business	A for-profit entity established by the State on the basis of an authorization or license to conduct commerce or provide services.	The State must have a State approval or licensure process, and the institution must comply with the State approval or licensure process and be approved or licensed by name.
Charitable organization	A nonprofit entity established by the State on the basis of an authorization or license for the public interest or common good.	An institution in this category may not be exempted from State approval or licensure based on accreditation, years in operation, or a comparable exemption

*Notes:
• Federal, tribal, and religious institutions are exempt from these requirements.
• A State must have a process, applicable to all institutions except tribal and Federal institutions, to review and address complaints directly or through referrals.
• The chart does not take into requirements related to State reciprocity.

Examples

Institutions considered legally authorized under amended § 600.9:

• A college has a royal charter from the colonial period recognized by the State as authorizing the institution by name to offer postsecondary programs. The State has no licensure or approval process.

• A community college meets the requirements based upon its status as a public institution.

• A nonprofit institution has State constitutional authorization by name as a postsecondary institution; State does not apply a licensure or approval process.

• A nonprofit institution has a State charter as a postsecondary institution. State law, without naming the institution, considers the institution to be authorized to operate in lieu of State licensure based on accreditation by a regional accrediting agency.

• An individual institution is owned by a publically traded corporation that is incorporated in a different State from where the institution is located. The institution is licensed to provide educational programs beyond the secondary level in the State where it is located.

• An institution is owned by a publicly traded corporation established as a business without the articles of incorporation specifying that the institution is authorized to offer postsecondary education, but the institution is licensed by the State to operate postsecondary education programs.

• An individual institution is owned by a publically traded corporation that is incorporated in a different State from where the institution is located. The State licenses the institution by name as a postsecondary institution.

• Rabbinical school awarding only a certificate of Talmudic studies has exemption as a religious institution offering only religious programs.

• Tribal institution is chartered by the tribal government.

Institutions not considered legally authorized under amended § 600.9:

• An institution is a publicly traded corporation established as a business without the articles of incorporation specifying that it is authorized to offer postsecondary education, and the State has no process to license or approve the institution to offer postsecondary education.

• A nonprofit institution is chartered as a postsecondary institution. A State law considers the institution to be authorized based on accreditation in lieu of State licensure but the institution is not named in the State law and does not have a certification by an appropriate State official, *e.g.,* State Secretary of Education or State Attorney General, that it is in compliance with the exemption for State licensure requirements.

• An institution is established as a nonprofit entity without specific authorization to offer postsecondary education, but State law considers the institution to be authorized based on it being in operation for over 30 years. The State Secretary of Education issues a certificate of good standing to the institution naming it as authorized to offer postsecondary education based on its years in operation.

• A Bible college is chartered as a religious institution and offers liberal arts and business programs as well as Bible studies. It is exempted by State law from State licensure requirements but does not meet the definition of a religious institution exempt from State licensure for Federal purposes because it offers other programs in addition to religious programs.

• An institution is authorized based solely on a business license, and the State considers the institution to be authorized to offer postsecondary programs based on regional accreditation.

Comment: One commenter provided proposed wording to amend proposed § 600.9(a)(1) to clarify that the State entity would include a State's legal predecessor. The commenter believed that the change was necessary to ensure that colonial charters would satisfy the State authorization requirement.

Discussion: If a State considers an institution authorized to offer postsecondary education programs in the State based on a colonial charter that established the entity as an educational institution offering programs beyond the secondary level, the institution would be considered to meet the provisions of § 600.09(a)(1)(i) of these final regulations so long as the institution also meets any additional licensure requirements or approvals required by the State.

Changes: None.

Comment: Several commenters expressed concern that all institutions within a State could lose title IV, HEA program eligibility at once and that the regulations put students at risk of harm through something neither they nor the institution can control.

One commenter was concerned with how the Department would specifically assess State compliance with proposed § 600.9. Another commenter believed

that the Department should accept State laws and regulations that can be reasonably interpreted as meeting the requirements of § 600.9 especially if State officials interpret their laws and regulations in such a manner.

One commenter requested that the Department explain how it would address currently enrolled students if a State is deemed not to provide sufficient oversight in accordance with Federal regulatory requirements. Another commenter asked how the Department will avoid such negative consequences as granting closed school loan discharges for large numbers of enrolled students. One commenter requested that the Department provide for seamless reinstatement of full institutional eligibility when a State meets all eligibility requirements after losing eligibility.

Discussion: We do not anticipate that all institutions in a State will lose title IV, HEA program assistance due to any State failing to provide authorization to its institutions under the regulations, because States may meet this requirement in a number of ways, and also with different ways for different types of institutions. If a State were to undergo a change that limited or removed a type of State approval that had previously been in place, it would generally relate to a particular set of institutions within a State. For example, a licensing agency for truck driving schools could lapse or be closed at a State Department of Transportation without providing another means of authorizing postsecondary truck driving programs. Only the eligibility of truck driving schools in the State would be affected under § 600.9 while the State could continue to be compliant for all other institutions in the State. It also seems likely that the State would consider alternate ways to provide State authorization for any institutions affected by such a change.

We believe that the provisions in amended § 600.9 are so basic that State compliance will be easily established for most institutions. The determination of whether an institution has acceptable State authorization for Federal program purposes will be made by the Department. We also note that the regulations permit a delayed effective date for this requirement under certain circumstances discussed below, and this delay will also limit the disruption to some institutions within a State.

If an institution ceased to qualify as an eligible institution because its State legal authorization was no longer compliant with amended § 600.9, the institution and its students would be subject to the requirements for loss of eligibility in subpart D of part 600 and an institution would also be subject to § 668.26 regarding the end of its participation in those programs. If an institution's State legal authorization subsequently became compliant with amended § 600.9, the institution could then apply to the Department to resume participation in the title IV, HEA program.

Changes: None.

Comment: Several commenters were concerned that students may lose eligibility for title IV, HEA program funds if a State is not compliant with proposed § 600.9. Some commenters noted that States may have to take steps to comply, which may include making significant statutory changes, and the regulations therefore need to allow adequate time for such changes, reflecting the various State legislative calendars. In some cases, the commenters believed a State's noncompliance would be because the State could no longer afford to meet the provisions of proposed § 600.9. One commenter believed that alternative pathways should be allowed for meeting State authorization and that States that exempt or grant waivers from licensing should be considered to fulfill requirements of proposed § 600.9 and another questioned whether a State that is not in compliance would have an opportunity to cure perceived problems before all institutions operating in the State lost institutional eligibility.

Discussion: We recognize that a State may not already provide appropriate authorizations as required by § 600.9 for every type of institution within the State. However, we believe the framework in § 600.9 is sound and provides a State with different ways to meet these requirements. Unless a State provides at least this minimal level of review, we do not believe it should be considered as authorizing an institution to offer an education program beyond secondary education.

If a State is not compliant with § 600.9 for a type or sector of institutions in a State, we believe the State and affected institutions will create the necessary means of establishing legal authorization to offer postsecondary education in the State in accordance with amended § 600.9. However, in the event a State is unable to provide appropriate State authorizations to its institutions by the July 1, 2011 effective date of amended § 600.9(a) and (b), we are providing that the institutions unable to obtain State authorization in that State may request a one-year extension of the effective date of these final regulations to July 1, 2012, and if necessary, an additional one-extension of the effective date to July 1, 2013. As described in the section of the preamble entitled "Implementation Date of These Regulations," to receive an extension of the effective date of amended § 600.9(a) and (b) for institutions in a State, an institution must obtain from the State an explanation of how a one-year extension will permit the State to modify its procedures to comply with amended § 600.9.

Changes: None.

Comment: A few commenters requested that the Department identify, publish, and maintain a list of States that meet or do not meet the requirements. One commenter cited an analysis that estimated that 13 States would comply with the proposed regulations upon implementation; 6 States would clearly not be in compliance; and 37 States would likely have to amend, repeal, or otherwise modify their laws. One commenter requested data to be provided by the Department for each sector of postsecondary education, including how many States are out of compliance, how many institutions are within those States, and how many students are enrolled at those institutions.

Discussion: We do not believe that there is a need to maintain and publish a list of States that meet, or fail to meet the requirements. States generally employ more than one method of authorizing postsecondary education. For example, a State may authorize a private nonprofit university through issuing a charter to establish the university, another private nonprofit college through an act of the State legislature, a for-profit business school through a State postsecondary education licensing agency, a cosmetology school through a State cosmetology board, and a truck-driving school through the State's Department of Transportation. We believe that an institution of whatever sector and type already is aware of the appropriate State authorizing method or methods that would establish the institution's legal authorization to offer postsecondary education and publication of any list is unnecessary.

Changes: None.

Comment: One commenter expressed concern with whether a State must regulate the activities of institutions and exercise continual oversight over institutions.

Discussion: While a State must have a process to handle student complaints under amended § 600.9(a) for all institutions in the State except Federal and tribal institutions, the regulations do not require, nor do they prohibit, any

process that would lead to continual oversight by a State.

Changes: None.

Comment: Several commenters expressed concern regarding the financial burden on the States to make changes in State laws and the amount of time that would be needed to make the necessary changes. Commenters feared that the States would most likely have to reduce further State tax subsidies provided to public institutions. As a result, costs will be increased for students at public institutions to cover lost revenues and increase costs for the title IV, HEA programs. One commenter stated that schools could delay progress of degree completion at State funded universities because they will be forced to reduce offerings.

Discussion: We do not believe that it would impose an undue financial burden on States to comply with the provisions in § 600.9. In most instances we believe that a State will already be compliant for most institutions in the State or will need to make minimal changes to come into compliance. Thus, we do not agree with commenters who believed that the regulations would generally impact the funding of public institutions in a State or would necessitate a reduction in the offerings at public institutions.

Changes: None.

Exemptions: Accreditation and Years of Operation

Comment: Several commenters supported the existing practice by which a State bases an institution's legal authorization to offer postsecondary education upon its accreditation by a nationally recognized accrediting agency, *i.e.,* an accrediting agency recognized by the Secretary. The commenters believed that proposed § 600.9 should be revised or clarified to permit existing practices allowing exemption by accreditation. Another commenter indicated that several States have exempted accredited institutions from State oversight unless those institutions run afoul of their accreditors' requirements. One commenter believed that proposed § 600.9 would require the creation of unnecessary, duplicative, and unaffordable new bureaucracies, and recommended that its State should continue its partial reliance on nationally recognized accrediting agencies. Another commenter believed it appropriate that a State delegate some or all of its licensure function to a nationally recognized accrediting agency provided that the State enters into a written agreement with the accrediting agency.

One commenter stated that the Department should eliminate the ambiguity about how much a State may rely on accrediting agencies. Several commenters stated that the regulations are confusing as to which exemptions are permissible and which are not. One commenter believed that the Department should make it clear that although a State is not prohibited from relying on accrediting agencies for quality assessments, the essential duties of State authorization cannot be collapsed into the separate requirement for accreditation.

Some commenters noted that an institution's legal authorization may be based on a minimum number of years that an institution has been operating. One of the commenters cited a minimum number of years used by States that ranged as low as 10 years of operation while two other commenters noted that institutions had been exempted in their State because they had been in operation over 100 years and were accredited. The commenters believed that the Department should consider it acceptable for a State to rely on the number of years an institution has been operating.

Some commenters did not think that States should be allowed to defer authorization to accrediting agencies. One of these commenters believed that basing State authorization on accreditation was contrary to law. One commenter believed that existing law makes clear that institutional eligibility for title IV, HEA programs is based on the Triad of accreditation, State authorization, and the Federal requirements for administrative capability and financial responsibility. As a result the commenter believed that the extent to which States may rely on accrediting agencies should be clear and limited. Along the same lines, another commenter believed strongly that accrediting agencies should never be allowed to grant authorization to operate in a State, and that further clarifications about the ways in which accrediting agencies may substitute for State agencies is necessary. One commenter encouraged the Department to study more carefully the role of State entities and accreditation agencies. Another commenter believed that relying on accrediting agencies to be surrogates for State authorization is inappropriate and should not be the sole determinant for authorization. One commenter stated that accreditation may not be accepted as a sufficient basis for granting or continuing authorization to operate and that the authorization process must be independent of any accreditation process or decision.

One commenter believed that proposed § 600.9 would undermine the role of accreditation and the public-private partnership and would call for States to intrude into academic areas. The commenter believed that the proposed regulations would move toward establishing accreditation as a State actor, a role that is incompatible with accreditation's commitment to self-regulation and peer and professional review. Another commenter believed that the Department should make it clear that although a State is not prohibited from relying on accrediting agencies for quality assessments, the essential duties of State authorization cannot be collapsed into the separate requirement for accreditation. If an institution's State and accrediting agency have different standards, one commenter was concerned regarding which entity's standards would be applied.

Discussion: While we recognize and share the concerns of some commenters that States should not be allowed to defer authorization to accrediting agencies, we believe that such a practice would be permissible so long as it does not eliminate State oversight and clearly distinguishes the responsibilities of the State and accreditor under such an arrangement. We also do not agree that additional study is needed of the roles of State entities and accrediting agencies as we believe these relationships are well understood.

We believe that accreditation may be used to exempt an institution from other State approval or licensing requirements if the entity has been established by name as an educational institution through a charter, statute, constitutional provision, or other action issued by an appropriate State entity to operate educational programs beyond secondary education, including programs leading to a degree or certificate. For such an educational institution, a State could rely on accreditation to exempt the institution from further approval or licensing requirements, but could not do so based upon a preaccredited or candidacy status.

We also agree with the commenters that States may utilize an institution's years in operation to exempt it from State licensure requirements, but only, as with accreditation, for a legal entity that the State establishes as an educational institution authorized to offer postsecondary education. However, we believe that there should be a minimum standard for allowing years of operation to exempt an institution to ensure that this exemption is not set to a short period of time that would not provide a historical basis to

evaluate the institution. Based on our consideration of the public comment, we believe that standard should be at least 20 years of operation. As in the case of accreditation, such an exemption could only be used if the State has established the entity as an educational institution. As noted above, a State may use a separate process to recognize by name the entity as an educational institution that offers programs beyond the secondary level if an institution was not authorized by name to offer educational programs in its approval as a legal entity within a State. We note that a State may also base a licensing exemption on a combination of accreditation and the number of years an institution has been in operation, as long as the State requirements meet or exceed at least one of the two minimum requirements, that is, an institution must be fully accredited or must have been operating for at least 20 years.

If an institution is established as a legal entity to operate as a business or charitable organization but lacks authorization to operate by name as an educational institution that offers postsecondary education, the institution may not be exempted from State licensing or approval based on accreditation, years in operation, or comparable exemption from State licensure or approval.

We do not believe that permitting such exemptions from State licensing requirements will distort the oversight roles of the State and an accrediting agency. We believe these comments are based on a misunderstanding of the role of a State agency recognized by the Secretary under 34 CFR part 603 as a reliable authority regarding the quality of public postsecondary vocational education in its State. Public postsecondary vocational institutions are approved by these agencies in lieu of accreditation by a nationally recognized accrediting agency. As noted in the comments, there are overlapping interests among all members of the Triad in ensuring that an educational institution is operating soundly and serving its students, and a State may establish licensing requirements that rely upon accreditation in some circumstances.

If an institution's State and accrediting agency have different standards, there is no conflict for purposes of the institution's legal authorization by the State, as the institution must establish its legal authorization in accordance with the State's requirements.

Changes: We have amended proposed § 600.9 to provide that, if an institution is an entity that is established by name as an educational institution by the State and the State further requires compliance with applicable State approval or licensure requirements for the institution to qualify as legally authorized by the State for Federal program purposes, the State may exempt the institution by name from the State approval or licensure requirements based on the institution's accreditation by one or more accrediting agencies recognized by the Secretary or based upon the institution being in operation for at least 20 years. If an institution is established by a State as a business or a nonprofit charitable organization, for the institution to qualify as legally authorized by the State for Federal program purposes, the State may not exempt the institution from the State's approval or licensure requirements based on accreditation, years in operation, or other comparable exemption.

Complaints

Comment: An association of State higher education officials recommended that the States, through their respective agencies or attorneys general, should retain the primary role and responsibility for student consumer protection against fraudulent or abusive practices by postsecondary institutions. The commenter stated that handling complaints is not a role that can or should be delegated to nongovernmental agencies such as accrediting agencies, nor should it be centralized in the Federal Government. Another commenter asked about the role of State enforcement of laws unrelated to postsecondary institutions licensure such as a law related to fraud or false advertising. A few commenters asked for clarification as to whether State consumer protection agencies or State Attorneys General could retain the primary role for student consumer protection and handling student complaints. One commenter believed that the proposed regulations failed to address circumstances where the State licensure or approval agency and the agency handling complaints are different agencies.

Several commenters recommended that the Department allow States to rely on accrediting agencies but require a memorandum of understanding with the accrediting association that would include, at a minimum, procedures for periodic reports on actions taken by the association and procedures for handling student complaints. One commenter strongly believed that accrediting agencies should never be allowed to handle complaints in lieu of the State.

One commenter expressed concern that the Department is requiring States to serve as an additional check on institutional integrity, but believed that there would be no check on the State.

One commenter from an accrediting agency believed that proposed § 600.9(b)(3) is an unnecessary use of limited public resources, is impractical, and would be impractical and chaotic to administer. Several other commenters expressed concern that requiring States to act on complaints would be duplicative because 34 CFR 602.23 already requires accrediting agencies to have a process to respond to complaints regarding their accredited institutions. One commenter requested that the Department exempt public postsecondary institutions from the complaint processes. Otherwise, the commenter asked that the Department clarify that a State is permitted to determine whether an institution within its borders is sufficiently accountable through institutional complaint and sanctioning processes. One commenter requested that the Department clarify that student complaints unrelated to violations of State or Federal law are not subject to State process or reviewing and acting on State laws, instead the commenter believed that student complaints are appropriately addressed at the institutional level. A commenter questioned how the requirements for State review of complaints relate to student complaints about day-to-day instruction or operations and whether the potential review process represents an expansion of State authority. The commenter believes that student complaints that are unrelated to violations of State or Federal law are appropriately addressed at the institutional level and thus not subject to the process for review of complaints included as part of proposed § 600.9.

One commenter suggested that the Department's Office of Ombudsman respond to student complaints as an alternative if a State does not have a process for complaints.

Discussion: We agree with the commenters who believed that the States should retain the primary role and responsibility for student consumer protection against fraudulent or abusive practices by some postsecondary institutions. For an institution to be considered to be legally authorized to offer postsecondary programs, a State would be expected to handle complaints regarding not only laws related to licensure and approval to operate but also any other State laws including, for example, laws related to fraud or false advertising. We agree that a State may fulfill this role through a State agency or

the State Attorney General as well as other appropriate State officials. A State may choose to have a single agency or official handle complaints regarding institutions or may use a combination of agencies and State officials. All relevant officials or agencies must be included in an institution's institutional information under § 668.43(b). Directly relying on an institution's accrediting agency would not comply with § 600.9(a)(1) of these final regulations; however, to the extent a complaint relates to an institution's quality of education or other issue appropriate to consideration by an institution's accrediting agency, a State may refer a complaint to the institution's accrediting agency for resolution. We do not believe it is necessary to prescribe memoranda of understanding or similar mechanisms if a State chooses to rely on an institution's accrediting agency as the State remains responsible for the appropriate resolution of a complaint. Section 600.9(a)(1) requires an institution to be authorized by a State, thus providing an additional check on institutional integrity; however, we do not believe there are inadequate checks on State officials and agencies as they are subject to audit, review, and State legislative action.

We do not agree with the commenters that proposed § 600.9(b)(3) would unnecessarily use State resources, be impractical, or be chaotic to administer. There are complaints that only a State can appropriately handle, including enforcing any applicable State law or regulations. We do not agree that public institutions should be exempt from this requirement as a complainant must have a process, independent of any institution—public or private, to have his or her complaint considered by the State. The State is not permitted to rely on institutional complaint and sanctioning processes in resolving complaints it receives as these do not provide the necessary independent process for reviewing a complaint. A State may, however, monitor an institution's complaint resolution process to determine whether it is addressing the concerns that are raised within it.

We do not agree with the suggestions that the Department's Student Loan Ombudsman is an appropriate alternative to a State complaints process. The Ombudsman is charged, under the HEA, with the informal resolution only of complaints by borrowers under the title IV, HEA loan programs. By comparison, a State's complaint resolution process would cover the breadth of issues that arise under its laws or regulations.

Changes: We have amended proposed § 668.43(b) to provide that an institution must make available to a student or prospective student contact information for filing complaints with its accreditor and with its State approval or licensing entity and any other relevant State official or agency that would appropriately handle a student's complaint.

Comment: One commenter believed that proposed § 668.43(b) under which an institution must provide to students and prospective students the contact information for filing complaints with the institution's State approval or licensing entity should make allowance for situations in which a State has no process for complaints, or defers to the accrediting agency to receive and resolve complaints. Another commenter believed that, in the case of distance education, the institution should be responsible for responding to complaints. Instead of providing students and prospective students, under proposed § 668.43(b), the contact information for filing complaints with the institution's accrediting agency and State approval or licensing entity, the commenter recommended that the institution provide students with the institution's name, location, and Web site to file complaints.

Discussion: We do not agree that proposed § 668.43(b) needs to make allowance for an institution in a State without a process for complaints, since every State is charged with enforcing its own laws and no institution is exempt from complying with State laws. If no complaint process existed, the institution would not be considered to be legally authorized. With respect to an institution offering distance education programs, the institution must provide, under § 668.43(b), not only the contact information for the State or States in which it is physically located, but also the contact information for States in which it provides distance education to the extent that the State has any licensure or approval processes for an institution outside the State providing distance education in the State.

Changes: None.

Reciprocity and Distance Education

Comment: In general, commenters expressed concerns regarding legal authorization by a State in circumstances where an institution is physically located across State lines as well as when an institution is operating in another State from its physical location through distance education or online learning. One commenter urged the Department to include clarifying language regarding a State's ability to rely on other States' authorization in the final regulation rather than in the preamble. Several commenters requested that the Department limit the State authorization requirement in § 600.9 to the State in which the institution is physically located. One commenter believed that a State should only be allowed to rely on another State's determination if the school has no physical presence in the State and the other State's laws, authority, and oversight are at least as protective of students and taxpayers. One commenter asked whether the phrase "the State in which the institution operates" is the same as "where the institution is domiciled". The commenter asked for clarification of the meaning of "operate" including whether it means where online students are located, where student recruiting occurs, where an instructor is located, or where fundraising activity is undertaken. One commenter requested that the Department clarify and affirm that reciprocity agreements that exist between States with respect to public institutions operating campuses or programs in multiple States are not impacted by these regulations. Another commenter believed that the Department should issue regulations rather than merely provide in the preamble of the NPRM that a State is allowed to enter into an agreement with another State. One commenter asked whether an institution that operates in more than one State can rely on an authorization from a State that does not meet the authorization requirements. One commenter urged the Department to clarify that States may rely on the authorization by other States, particularly as it relates to distance education. One commenter stated that the proposed regulations would be highly problematic for students who transfer between different States. Another commenter feared that large proprietary schools that are regional or national in scope would likely lobby States to turn over their oversight to another State where laws, regulations, and oversight are more lax. Another commenter was concerned that for-profit institutions may lobby a State to relinquish its responsibilities to a State of those institutions' choosing. This situation could result in a State with little regulation that is home to a large for-profit institution actually controlling policies in many States where the corporation does business. One commenter suggested that if an institution is not physically located in a State, the State could enter into an agreement with other States where the

institution does have physical locations to rely on the information the other States relied on in granting authority. In this case, the commenter recommended that the oversight be at least as protective of students and the public as those of the State, and the State should consider any relevant information it receives from other sources. However, the commenter thought the State should retain authority to take independent adverse action including revoking the authority to offer postsecondary programs in the State. Another commenter expressed concern that the proposed regulations would confuse and burden the States and institutions because they are not clear regarding whether a State can continue to rely on the authorization of another State. The commenter believed that without clarification, an institution that offers education to students located in other States might be needlessly burdened with seeking authorization from each of those States. Another commenter expressed concern that the proposed regulations could potentially require an institution offering distance education courses in 50 different States to obtain authorization in each State, which would be an administrative burden that could result in increased tuition fees for students. Another commenter stated that during the negotiations, the Department indicated it was not its intent to require authorization in every State. Therefore, the commenter urged the Department to include this policy expressly in the final regulations.

Discussion: We agree with the commenters that further clarification is needed regarding legal authorization across State lines in relation to reciprocity between States and to distance education and correspondence study. In making these clarifications, we are in no way preempting any State laws, regulations, or other requirements established by any State regarding reciprocal agreements, distance education, or correspondence study.

To demonstrate that an institution is legally authorized to operate in another State in which it has a physical presence or is otherwise subject to State approval or licensure, the institution must demonstrate that it is legally authorized by the other State in accordance with § 600.9. We continue to believe that we do not need to regulate or specifically authorize reciprocal agreements. If both States provide authorizations for institutions that comply with § 600.9 and they have an agreement to recognize each other's authorization, we would consider the institution legally authorized in both States as long as the institution provided appropriate documentation of authorization from the home State and of the reciprocal agreement. In addition, the institution must provide the complaint contact information under 34 CFR 668.43(b) for both States.

If an institution is offering postsecondary education through distance or correspondence education in a State in which it is not physically located, the institution must meet any State requirements for it to be legally offering distance or correspondence education in that State. An institution must be able to document upon request from the Department that it has such State approval.

A public institution is considered to comply with § 600.9 to the extent it is operating in its home State. If it is operating in another State, we would expect it to comply with the requirements, if any, the other State considers applicable or with any reciprocal agreement between the States that may be applicable.

Changes: We have revised § 600.9 to clarify in paragraph (c) that, if an institution is offering postsecondary education through distance or correspondence education to students in a State in which it is not physically located, the institution must meet any State requirements for it to be legally offering postsecondary distance or correspondence education in that State. We are further providing that an institution must be able to document upon request by the Department that it has the applicable State approval.

State Institutions

Comment: Many commenters requested that public institutions be exempted from the proposed regulations. They were concerned that requiring States to reexamine their State authorization for public colleges would not be a good use of resources. One commenter requested that the Department explicitly state that public institutions are by definition agents of the State and thus need no further authorization. One commenter from a State university system believed that the Federal Government should not impose a uniform model with "one size fits all States." Another commenter noted that a State may not have legal power over decisions made by authorities given under the State's constitution for oversight of certain public postsecondary institutions. One commenter believed that public institutions should be exempt from the proposed requirements for adverse actions and complaint processes.

Discussion: As instrumentalities of a State government, State institutions are by definition compliant with § 600.9(a)(1)(i), and no exemption from the provisions of § 600.9 of these final regulations is necessary. We do not agree that State institutions should be exempt from the requirement that a State have a process to review and appropriately act on complaints concerning an institution. We believe that students, their families, and the public should have a process to lodge complaints that is independent of an institution.

Changes: None.

Religious Institutions

Comment: Two commenters requested a definition of the term *religious institution.* One of these commenters felt strongly that a religious exemption must be tailored to prevent loopholes for abuse but needed to offer an alternative for religious institutions so that changes to a State's constitution would not be necessary. The commenter suggested that a religious institution should be exempted if the institution is owned, controlled, operated, and maintained by a religious organization lawfully operating as a nonprofit religious corporation pursuant to the Internal Revenue Code and meets the following requirements:

- Instruction is limited to the principles of that religious organization.
- A diploma or degree awarded by the institution is limited to evidence of completion of that education.
- The institution offers degrees and diplomas only in the beliefs and practices of the church, religious denomination, or religious organization.
- The institution does not award degrees in any area of physical science.
- Any degree or diploma granted by the institution contains on its face, in the written description of the title of the degree being conferred, a reference to the theological or religious aspect of the degree's subject area.
- A degree awarded by the institution reflects the nature of the degree title, such as "associate of religious studies," "bachelor of religious studies," "master of divinity," or "doctor of divinity."

Discussion: We agree with the commenters that a definition of a *religious institution* is needed to clarify the applicability of a religious exemption. We also agree that a modification to the proposed regulations is needed to allow a State to provide an exemption to religious institutions without requiring the State to change its constitution.

Changes: We have expanded § 600.9(b) to provide that an institution is considered to be legally authorized by the State if it is exempt from State

authorization as a religious institution by State law in addition to the provision of the proposed regulations that the exemption by law, or exempt under the State's constitution. We have also included a definition of a *religious institution,* which provides that an institution is considered a religious institution if it is owned, controlled, operated, and maintained by a religious organization lawfully operating as a nonprofit religious corporation and awards only religious degrees or religious certificates including, but not limited to, a certificate of Talmudic studies, an associate of biblical studies, a bachelor of religious studies, a master of divinity, or a doctor of divinity. We note, however, that a religious institution is still subject to the requirement in § 600.9(a)(1) of these final regulations that, for the institution to be considered to be legally authorized in the State, the State must have a process to review and appropriately act on complaints concerning the institution.

Tribal Institutions

Comment: One commenter suggested the Department should exempt from State authorization any institution established and operated by tribal governments. Three commenters stated that the Department should recognize that tribal institutions would not be subject to State oversight but instead the tribe would exercise oversight. One of those commenters suggested amending the regulations to add "tribal authority" wherever State authority is mentioned in the proposed regulations.

Discussion: We agree that tribal institutions are not subject to State oversight for institutions operating within tribal lands. Proposed § 600.9(a)(2) provided that a tribal college would be considered to meet the basic provisions of proposed § 600.9(a)(1) if it was authorized to offer educational programs beyond secondary education by an Indian tribe as defined in 25 U.S.C. 1802(2). However, proposed § 600.9(b), could be read as inappropriately making a tribal institution subject to adverse actions by the State and a State process for handling student complaints. We did not intend to make a tribal institution subject to any State process for handling complaints and have clarified the language in § 600.9. If a tribal college is located outside tribal lands within a State, or has a physical presence or offers programs to students that are located outside tribal lands in a State, the tribal college must demonstrate that it has the applicable State approvals needed in those circumstances.

Changes: Section 600.9 has been revised to clarify the status of tribal institutions. As noted elsewhere in this preamble, we have removed proposed § 600.9(b)(2) regarding adverse actions. Further, we are providing that, in § 600.9(a)(2)(ii) of the final regulations, the tribal government must have a process to review and appropriately act on complaints concerning a tribal institution and enforce applicable tribal requirements or laws.

Part 668 Student Assistance General Provisions Retaking Coursework (§ 668.2)

Comment: Many commenters agreed with the Secretary's proposal to amend the definition of *full-time student* in § 668.2(b) to allow repeated coursework to count towards a student's enrollment status in term-based programs. The commenters believed the change would alleviate the administrative burden related to tracking student coursework to prevent payment based on repeated coursework, as is currently required.

Discussion: The Department agrees with the commenters that amending the definition of *full-time student* in § 668.2(b) will be beneficial for students who retake coursework.

Changes: None.

Comment: Several commenters asked the Department to clarify whether amending the definition of *full-time student* will apply to all students, regardless of their enrollment status, including less-than-half-time, half-time, and three-quarter-time enrollment statuses.

Discussion: Less-than-half-time, half-time, and three-quarter-time statuses are generally defined in relation to the definition of a *full-time student.* In § 668.2 half-time and three-quarter-time statuses generally are defined as at least one-half and three quarters of the academic workload of a full-time student, respectively. Less-than-half-time status is not defined, as the term is self-explanatory in its relationship to half-time and full-time statuses. Thus, including this provision in the definition of *full-time student* will apply to less-than-full-time students who are enrolled in term-based programs.

Changes: None.

Comment: Some commenters asked the Department to allow early implementation of this retaking coursework provision, because the Department's current guidance in the Federal Student Aid Handbook does not provide for this benefit.

Discussion: We have determined, as a general policy, that no provisions of these final regulations should be designated for early implementation. We will update the Handbook for the 2011–2012 award year to reflect the amended definition of *full-time student* in these final regulations.

Changes: None.

Comment: Some commenters questioned whether institutions may continue to set their own policy in regards to retaking coursework and awarding credits for repeated coursework. One commenter asked the Department to clarify if the proposed regulation on retaking coursework would allow a student to repeat courses already passed to achieve a higher grade. Another commenter asked the Department to clarify whether a student who has already earned the maximum number of remedial courses allowed could be paid to retake coursework if the student repeats more remedial courses.

Discussion: In general, the regulations do not affect an institution's policies governing whether a student may retake coursework in term-based programs, including repeating courses to achieve a higher grade, as these regulations apply only to determining enrollment status for title IV, HEA program purposes. Moreover, the regulations do not limit an institution's ability to establish policies for title IV, HEA program purposes to the extent those policies are not in conflict with title IV, HEA program requirements. However, with respect to repeating coursework previously passed by a student in a term-based program, the student's enrollment status for title IV, HEA purposes may include any coursework previously taken in the program, but we are limiting the provision so that it may not include more than one repetition of a previously passed course or any repetition of previously passed coursework that would be taken due to a student's failure of other coursework. In other words, an institution may pay a student one time for retaking previously passed coursework if, for example, the student needed to meet an academic standard for that particular course, such as a minimum grade. Conversely, an institution may not pay a student for retaking previously passed courses if the student is required to retake those courses because the student failed a different course in a prior term. For example, if a student enrolls in four classes in the fall semester and passes three of them, the institution could require the student to retake the failed class and also require the student to retake the other three classes because of failing the one class. If the student retakes the four classes in the spring semester, the failed class would be included in the student's enrollment

status, but the three classes passed in the fall would not be included in determining the student's enrollment status for the spring semester for purposes of the title IV, HEA programs. We believe these revisions are necessary to limit potential abuse from courses being retaken multiple times, while providing institutions sufficient flexibility to meet the needs of most students.

We would also note that an institution's satisfactory academic progress policy could further limit a student from retaking coursework, because the credits associated with any course the student retakes count toward the maximum time-frame requirement.

The regulations do not affect the one-year academic limitation on noncredit and reduced-credit remedial coursework under § 668.20(d) and (f). For example, if a student repeats a remedial course that exceeds the one-year limitation, the course could not be considered in the student's enrollment status.

Changes: We have revised the definition of *full-time student* in § 668.2(b) to provide that a student's enrollment status for a term-based program may include repeating any coursework previously taken in the program but may not include more than one repetition of a previously passed course, or any repetition of a previously passed course due to the student's failing other coursework.

Comment: One commenter recommended that the change in the definition of *full-time student* should be expanded to include nonstandard-term and nonterm programs.

Discussion: Since the change in the definition applies to all term-based programs, the change would apply to standard terms, including semesters, trimesters, and quarters, as well as nonstandard terms. Under the definition of a *nonterm payment period* in § 668.4(c), a student's coursework is divided into payment periods based on the hours and weeks of instructional time in the program. In general, under these nonterm provisions a student must successfully complete the credit or clock hours in a payment period to advance to the next payment period, and may not be paid for repeating coursework regardless of whether the student successfully completed it unless the provisions of § 668.4(g) apply.

Changes: None.

Written Arrangements (§§ 668.5 and 668.43)

General

Comment: Several commenters agreed with the proposed regulations relating to written arrangements. One commenter commended the Department's proposals on this topic, noting that they strike a fair balance in the presence of many minutia-driven concerns. Some commenters stated that the proposed changes eliminate inconsistencies that exist in the current regulations and provide better information to students while allowing institutions to determine the best way to disseminate the required information. Other commenters stated that they agreed with the proposed changes in §§ 668.5 and 668.43 because if an eligible institution enters into a written arrangement with another eligible institution, under which the other eligible institution provides part of the educational program to students enrolled in the first institution, it is important for all parties to have a clear understanding of which institution is providing the credential and the majority of the education and training.

Discussion: We appreciate the commenters' support of the proposed changes reflected in §§ 668.5 and 668.43.

Changes: None.

Written Arrangements Between Two or More Eligible Institutions (§ 668.5(a))

Comment: Some commenters objected to the Department's assertion—in the preamble of the NPRM (75 FR 34806, 34815)—that students who want to take more than 50 percent of an educational program at another institution could transfer to the institution that provides the preponderance of the program's coursework. One commenter stated that students should be allowed to take courses at more than one campus of eligible institutions that have a written arrangement without needing to go through unnecessary activities related to transfer of credit.

Several commenters disagreed with the proposed changes reflected in § 668.5(a)(2)(ii). First, they argued that imposing a limitation on the portion of an educational program one institution can provide under a written arrangement is not consistent with the purpose of consortium agreements, which is to allow students to obtain a degree or certificate from their institution of choice while allowing them to satisfy course requirements by taking courses delivered by another institution. Second, the commenters disagreed with the limitation because we do not place similar restrictions on institutions when they accept transfer students who have earned more than half of the credits that will go toward their educational program at another institution. Finally, the commenters argued that more students are attending multiple institutions before completing their degree or certificate programs and a requirement that the credential-granting institution must provide 50 percent of the individual student's educational program would be a barrier to the students' postsecondary success.

In addition, a few commenters noted that current articulation agreements allow students to further their education at another institution that may accept enough credits on transfer that the student has less than 50 percent of the program remaining to be completed. Some commenters expressed the view that the proposed regulations governing written arrangements should not apply to articulation agreements while others sought clarification of whether the Department's position is that they do apply to such agreements. Commenters expressed concern that the proposal would result in undue hardship and fewer opportunities for students in small communities who take a portion of their coursework locally. One commenter asked whether the proposed changes reflected in § 668.5 affect students who obtained college credit while still in high school.

Discussion: There appears to be some confusion about the scope of the proposed changes to § 668.5. Under proposed § 668.5(a)(1), eligible institutions that are not under common ownership may enter into a written arrangement (which may include the type of consortium agreements mentioned by the commenters) under which the non-degree-granting institution offers part of the degree-granting institution's educational program; this provision does not impose a specific limitation on the portion of the educational program that may be offered by the non-degree-granting institution. In contrast, under proposed § 668.5(a)(2)(ii), if a written arrangement is between two or more eligible institutions that are under common ownership (*i.e.,* are owned or controlled by the same individual, partnership or corporation), the degree- or certificate-granting institution must provide more than 50 percent of the educational program. In this situation, a student is considered a regular student at the degree- or certificate-granting institution while taking a portion of the educational program at another institution under common ownership. Under this regulatory framework, a consortium agreement between two eligible institutions that are not under common ownership is not subject to the 50 percent limitation in § 668.5(a)(2)(ii).

Moreover, § 668.5(a) does not apply to articulation agreements under which

institutions agree to accept credits when students transfer from one institution to another, or to cases where individual students transfer to a different institution to complete their educational programs. Students who enroll in an institution and have college credits accepted on transfer that were earned while in high school also do not come within the scope of this regulation.

Changes: None.

Comment: A number of commenters disagreed with proposed § 668.5(a)(2), which has the effect of limiting the relative portions of an educational program provided by more than one institution under the same ownership or control. Some commenters argued that the limit is arbitrary and inappropriate because—for all intents and purposes—institutions under common ownership are the same. A few commenters suggested that the regulations should focus more narrowly on the institutions with problems as opposed to all institutions under common ownership. Some commenters were unclear about what constitutes "common ownership" and what types of written arrangements are subject to the 50 percent limitation in § 668.5(a)(2)(ii).

Some commenters indicated that the proposed regulations should apply to all institutions and not apply only to for-profit institutions. Several commenters expressed concern about the applicability of this provision to the many written arrangements between public institutions within a State and whether a State is considered to "own" all of its institutions. Other commenters asked the Department to clarify that public and private nonprofit institutions are not covered by the proposed language in § 668.5(a)(2).

In addition, commenters raised concerns about the potential impact these regulations could have on students who move to another area and want to transfer to another location of the same institution. One commenter stated that the proposed change would discourage students who finish a program from transferring to another institution under the same control for a higher level program.

Some commenters objected to the Department's assertions in the preamble of the NPRM that written arrangements are used by institutions under common ownership to circumvent other regulations and argued that the Department provided only anecdotal evidence to support the proposed changes in § 668.5. Commenters stated that institutions that are circumventing the current regulations will find other opportunities to do so and should face sanctions under the misrepresentation provisions.

Discussion: As indicated in the preamble to the NPRM, the Department focused its regulatory changes on the types of institutions and situations where problems have been identified rather than expanding a requirement for accrediting agencies to review written arrangements between institutions under common ownership. We modeled these regulations on the language in § 668.5(c)(3)(ii)(B), regarding written arrangements between an eligible institution and an ineligible institution or organization because that section of the regulations refers to institutions that are owned or controlled by the same individual, partnership, or corporation.

We do not agree with the commenter who stated that the regulations are arbitrary and inappropriate because institutions under common ownership are the same entity. This is because institutions are approved to participate in the Federal student aid programs as separate entities, and they must individually demonstrate eligibility as an institution, eligibility for the programs they offer, program compliance, cohort default rates, financial responsibility, and administrative capability. Some limitations on institutions that are based on program measures can be circumvented if programs that appear to be offered by one institution are actually offered by another institution. The prohibition in this regulation will ensure that the institution providing most of the program will be the one associated with the students that are taking the program.

Section 668.5(a)(2) does not apply to public or private nonprofit institutions because these institutions are not owned or controlled by other entities and generally act autonomously. Some nonprofit institutions may have business relationships through management agreements or service agreements where similar concerns could arise, but those instances are expected to be infrequent and will be addressed on a case-by-case basis.

These provisions do not impact the ability of individual students to transfer to another location of the same institution or to another institution under the same ownership or control either to complete an educational program or to enroll in a higher-level program. When a student transfers to a new institution and enrolls for the purpose of completing a degree or certificate, the new institution becomes the degree-granting institution.

We agree that institutions that circumvent or otherwise violate regulations should face appropriate sanctions.

Changes: None.

Comment: A number of commenters supported the proposed changes to § 668.5 regarding the limitations on the portion of the educational program that may be offered by another institution under a written arrangement, but sought clarification on how to measure portions of educational programs for these purposes. These commenters suggested that, for the purposes of determining the percentage of the educational program provided by each institution, we should track the provision of educational services on a programmatic basis rather than by the amount of coursework an individual student may elect to take.

Discussion: For purposes of determining the portions of the educational program provided by each institution under any written arrangement under § 668.5, the degree-granting institution is responsible for limiting the amount of the program that may be taken from any other institution.

Because an institution cannot offer more than 50 percent of an educational program through another institution that is under common ownership or control, if an institution offered an educational program on campus and online (through a written arrangement with another institution under common ownership) and offered students the option of taking courses by either method, the institution must ensure that each student completes more than 50 percent of the educational program on campus. If the same institution enrolled students who live beyond a reasonable commuting distance to the campus and, therefore, take the online portion of the program first, the institution must be able to demonstrate that the students intend to attend on campus to complete at least 50 percent of their educational program.

Changes: None.

Comment: Some commenters agreed that the institution that grants the degree or certificate should provide more than 50 percent of the educational program, but suggested that monitoring for compliance with this regulatory provision should be done by accrediting agencies rather than the Department. These commenters noted that to the extent that written arrangements are part of a deliberative process related to the development of curriculum and academic requirements, they are part of a decision-making process best performed by an institution's faculty and leadership and best evaluated by accrediting agencies. Some commenters stated that the Department should rely on accrediting agencies to set appropriate limits on the portion of an

educational program that can be provided by the non-degree-granting institution. One commenter stated that, currently, some national accrediting agencies allow students the opportunity to take more than 50 percent of their educational program from the non-degree-granting institution.

Discussion: We acknowledge the important role that an institution's faculty and leadership play in the development of written arrangements as well as the role of accrediting agencies in monitoring the use of such arrangements in accordance with their standards. However, as we learned during negotiations, accrediting agencies have differing practices concerning the review of written arrangements, and some accrediting agencies do not routinely review written arrangements. As such, we believe that it is important to establish a threshold for the amount of the educational program that can be offered under a written arrangement by an institution under common ownership with a host institution. Accrediting agencies may establish a more restrictive measure if they wish to do so.

Changes: None.

Comment: One commenter expressed concern that proposed § 668.5(a) would affect the Service Members Opportunity College Army Degree (SOCAD) Institution Agreements currently in place, which allow 75 percent of an educational program to be provided by the non-degree-granting institution. However, the Contract Administrator of SOCAD provided a separate comment stating that the proposed regulations would not affect the current relationships provided to members of the military.

Discussion: As noted earlier, the proposed limitations in § 668.5(a)(2) apply only to written arrangements between two or more eligible institutions that are owned or controlled by the same individual, partnership, or corporation. To the extent that the eligible institutions that participate in SOCAD are not owned or controlled by the same individual, partnership, or corporation, they are not subject to the proposed changes in § 668.5(a)(2).

Changes: None.

Comment: One commenter supported the clarification that the enrolling institution has all the necessary approvals to offer an educational program in the format in which it is being provided. Another commenter argued that it is nonsensical to require the enrolling institution to have all the same approvals as the providing institution. The commenter stated that written arrangements exist to permit flexibility for students and additional options for students in pursuing their education goals. One of the benefits of such arrangements, argued the commenter, is to provide student access to learning resources and opportunities that the degree-granting institution cannot provide. For example, written arrangements may afford students access to online learning from an institution with demonstrated competencies in providing distance education. Our clarification in the preamble to the NPRM that the institution enrolling the student must have the approval to offer an education program in the format in which it is being offered limits the ability for campus-based schools to offer cutting-edge online delivery methods for some programs even when these online courses are provided by affiliated and fully accredited institutions. One commenter argued that the Department had failed to provide data to support this limitation. Another commenter suggested that there should be a transition or grace period to allow institutions to get any needed approvals.

Discussion: We agree that written arrangements are designed to provide educational flexibility for students and to allow them access to resources and opportunities that may not be available from their degree-granting institution. However, we believe that it is important that the degree-granting institution have all the necessary approvals to offer the educational program in the format in which it is being offered. We note that only in cases in which an institution is offering more than 50 percent of an educational program through distance education is the institution required to receive approval from its accrediting agency to offer distance education. Therefore, a student who is taking only a few courses online as part of a written arrangement would not be likely to trigger the requirement that an institution seek approval from its accrediting agency to offer distance education. We do not see a need for a transition or grace period to allow institutions to get any needed approvals because we believe that most institutions already have the necessary approvals in place.

Changes: None.

Requirements for Arrangements Between Eligible Institutions and Ineligible Institutions or Organizations (§ 668.5(c))

Comment: One commenter supported the expansion of the list of conditions that preclude an arrangement between an eligible institution and an ineligible entity reflected in proposed § 668.5(c). Another commenter stated that the list of exclusions in proposed § 668.5(c) is overly broad. This commenter agreed with the Department's intent but pointed out that denial of recertification (§ 668.5(c)(iv)) may be due to a factor such as program length. The commenter suggested that we narrow § 668.5(c)(iv) to cover only denials of recertification that are based on the institution's lack of administrative capability or financial responsibility.

Discussion: We appreciate the support for the expansion of the list of conditions that preclude an arrangement between an eligible institution and an ineligible entity reflected in § 668.5(c). We disagree with the commenter who recommended that we limit the denial of recertification condition to cover only those recertification denials that are based on the institution's lack of administrative capability or financial responsibility. An institution that has its recertification denied because it does not offer one or more programs of sufficient length to qualify to participate in the Title IV, HEA programs has committed a serious programmatic violation that the Department believes should be included in this prohibition.

Changes: None.

Disclosures to Students (§§ 668.5(e) and 668.43(a)(12))

Comment: Several commenters supported the requirement that institutions providing an educational program under § 668.5(a), (b), or (c) inform students when part of their educational program is provided by a different institution and of additional charges that the student may incur when enrolling in an educational program that is provided in part by another institution. They noted that all communication to students should be clear, user-friendly, and understandable. One commenter suggested that we revise § 668.43(a)(12)(ii) to require the institution to include in its description of its written arrangements the Web sites along with the names and locations of the other institutions or organizations that are providing the portion of the educational program that the degree- or certificate-granting institution is not providing. Another commenter asked whether § 668.43(a)(12)(iv) requires the institution to include in its description of its written arrangements an estimate of the costs incurred by students taking online courses (*e.g.,* the costs of purchasing a computer and obtaining Internet access).

A few commenters requested clarification on whether the required student notifications apply only to educational programs that require

students to take coursework at another institution or whether they apply to institutions that enter into arrangements when students choose to take coursework at another institution. The commenters stated that if the notifications apply to both situations, the regulations would create an overwhelming burden for institutions. These commenters expressed concern that this burden would result in institutions limiting the use of written arrangements and that this, in turn, would result in less choice for students.

Discussion: We appreciate the support for requiring additional disclosures regarding the portion of a program being provided by a different institution and the additional costs that a student may incur under such an arrangement. We agree that these disclosures should be clear and understandable. While we agree that providing the Web site of the non-degree-granting institution in the disclosures may be helpful to students, on balance, we determined that requiring that particular disclosure is not necessary and that the decision to include such information in the disclosure should be left to the degree-granting institution's discretion.

As noted by the commenters, the required disclosures include disclosure of the estimated additional costs students may incur as the result of enrolling in an educational program that is provided, in part, under a written arrangement. Therefore, when the coursework provided through the written arrangement is provided online, it would be appropriate to include estimated additional costs such as the costs of purchasing a computer and obtaining Internet access.

As stated in the preamble to the NPRM, the disclosure requirements reflected in §§ 668.5(e) and 668.43(a)(12) apply to written arrangements between or among institutions under which the degree-granting institution can offer educational programs that are provided, in part, by another institution (*i.e.,* on an educational program-by-program basis) and not to individual, student-initiated written arrangements. We acknowledged that requiring disclosures to individual, student-initiated written arrangements would be impractical, burdensome and unnecessary because the student is a party to the arrangement and would already have the information required to be disclosed.

Changes: None.

Incentive Compensation (§ 668.14(b))

General

Comment: A significant number of commenters supported the Secretary's proposed changes to § 668.14(b)(22), which they stated would align the regulations with the statute and comprehensively ban the use of commissions, bonuses, and other direct forms of compensation based on success in securing enrollments or the award of financial aid. These commenters supported our efforts to ensure the integrity of the Federal student aid programs and to protect students against aggressive admissions and recruitment practices. They agreed that the current regulations, which included the language describing permitted compensation activities (*i.e.,* "safe harbors"), did not achieve the goals intended by the Congress. These commenters expressed the belief that the current safe harbors enable institutions to circumvent the law.

Several commenters stated that the proposed definitions reflected in § 668.14(b)(22)(iii) would be particularly helpful and expressed appreciation for our readiness to provide broad and appropriate guidance to institutions, rather than opinions on an individual institution's arrangements, in evaluating compensation issues.

Numerous commenters, particularly groups representing admissions counselors, specifically supported the deletion of the twelve safe harbors. The groups representing admissions counselors stated that they believe that counselors should be compensated in the form of a fixed salary. They further argued that because the admissions profession is a form of counseling, admissions professionals can only discharge their ethical obligations if they are free of vested interests in the enrollment decisions made by the prospective students they advise. The commenters representing admissions personnel also noted that elimination of the safe harbors would help prevent a recruiter's financial interest from overriding a student's academic interest.

Discussion: The Secretary appreciates the support offered by the commenters.

Changes: None.

Comment: A number of commenters who expressed support for the Secretary's goal in proposing changes to § 668.14(b)(22) requested modifications to the regulatory language or to the preamble discussion. The majority of these commenters requested clarifications to assist institutions in understanding whether particular compensation activities would be prohibited under proposed § 668.14(b)(22).

Many commenters opposed the proposed changes and appealed for the Department to retain the current safe harbors. They challenged the legal adequacy of the changes and asserted that the need for the proposed changes remained unsupported by any evidence or data. Some commenters alleged that the Department had failed to specify sound reasons for the change in policy and instead had offered nonspecific references to its reviews of compensation practices and expenditures of resources.

Other commenters asked whether all payments permitted under the current safe harbors would be prohibited under this new regulatory framework.

Discussion: Under section 410 of the General Education Provisions Act (20 U.S.C. 1221e–3), the Secretary has the authority to make, promulgate, issue, rescind, and amend rules and regulations governing the manner of operation of, and governing applicable programs administered by, the Department. For regulations governing the title IV, HEA programs, the Secretary also must ensure that the development and issuance of those regulations comply with the negotiated rulemaking requirements in section 492 of the HEA. In 2002, the Department adopted the incentive compensation safe harbors reflected in current § 668.14(b)(22)(ii) under the statutory authority granted in GEPA and the negotiated rulemaking requirements in the HEA. The Department adopted the current safe harbors based on a "purposive reading of section 487(a)(20) of the HEA." (67 FR 51723 (August 8, 2002).) Since that time, however, the Department's experience has demonstrated that unscrupulous actors routinely rely upon these safe harbors to circumvent the intent of section 487(a)(20) of the HEA. As such, rather than serving to effectuate the goals intended by Congress through its adoption of section 487(a)(20) of the HEA, the safe harbors have served to obstruct those objectives and have hampered the Department's ability to efficiently and effectively administer the title IV, HEA programs.

For example, it has been the Department's experience that many institutions routinely use employee evaluation forms that acknowledge that the number of students enrolled is an important, if not the most important, variable, in determining recruiter compensation. These forms also list certain qualitative factors that are ostensibly considered in making compensation decisions. The forms, on

their face, appear to demonstrate compliance with the first safe harbor, which permits compensation schemes that are not "solely" based on the number enrolled. However, the Department has been repeatedly advised by institutional employees that these other qualitative factors are not really considered when compensation decisions are made, and that they are identified only to create the appearance of title IV compliance. It is clear from this information that institutions are making actual compensation decisions based exclusively on the numbers of students enrolled.

The Department's need to look behind the documents that institutions allege they have used to make recruiter compensation decisions requires the expenditure of enormous amounts of resources, and has resulted in an inability to adequately determine whether institutions are in compliance with the incentive compensation ban in many cases.

For these reasons, we believe it is appropriate to remove the safe harbors and instead to require institutions to demonstrate that their admissions compensation practices do not provide any commission, bonus, or other incentive payment based in any part, directly or indirectly, upon success in securing enrollments or the award of financial aid to any person or entity engaged in any student recruitment or admission activity or in making decisions regarding the award of title IV, HEA program funds. We believe that institutions can readily determine if a payment or compensation is permissible under section 487(a)(20) of the HEA by analyzing—

(1) Whether it is a commission, bonus, or other incentive payment, defined as an award of a sum of money or something of value paid to or given to a person or entity for services rendered; and

(2) Whether the commission, bonus, or other incentive payment is provided to any person based in any part, directly or indirectly, upon success in securing enrollments or the award of financial aid, which are defined as activities engaged in for the purpose of the admission or matriculation of students for any period of time or the award of financial aid.

If the answer to each of these questions is yes, the commission, bonus, or incentive payment would not be permitted under the statute.

Therefore, going forward, actions that were permitted under current § 668.14(b)(22) will neither be automatically prohibited, nor automatically permitted. Instead, institutions will need to re-examine their practices to ensure that they comply with § 668.14(b)(22). To the extent that a safe harbor created an exception to the statutory prohibition found in section 487(a)(20) of the HEA, its removal would establish that such an exception no longer exists.

Changes: None.

Current Safe Harbors

Comment: Several commenters stated that removing the safe harbor from current § 668.14(b)(22)(ii)(B), which permits compensation to recruiters based upon enrollment of students in ineligible title IV, HEA programs, is contrary to congressional intent. These commenters stated that the HEA was not intended to regulate other educational endeavors of the institution. In addition, one commenter asked about a specific practice permitted by some State cosmetology boards that allows two non-title IV, HEA eligible programs to be combined and in that form, to become eligible for title IV, HEA aid. Another commenter asked about how the removal of this safe harbor would impact advanced education classes that are not title IV eligible.

Discussion: In our experience, institutions have used the safe harbor reflected in § 668.14(b)(22)(ii)(B) to steer students away from title IV, HEA programs. We believe that retaining this safe harbor would continue to allow institutions to manipulate the system by initially enrolling students in non-title IV, HEA eligible programs so that the institutions pay incentive compensation to recruiters based on such enrollments, only to later re-enroll the same students in title IV, HEA eligible programs.

We do not agree that the removal of this safe harbor is contrary to congressional intent. In particular, the only exception Congress provided in section 487(a)(20) of the HEA is to the recruitment of foreign students residing in foreign countries who are not eligible to receive Federal student assistance. For the reasons addressed in the preceding discussions, we believe it is inappropriate to carve out a further exception to include non-foreign students who are not immediately receiving Title IV funds.

Moreover, as to the comment regarding cosmetology schools, there is nothing in the identified practice that supports allowing compensation to be paid to recruitment personnel that is otherwise inconsistent with section 487(a)(20) of the HEA.

Finally, to the extent that the HEA's ban on the payment of incentive compensation is not otherwise limited to students enrolled in title IV, HEA eligible programs, institutions need to make sure that they are in compliance with the prohibition on incentive compensation regardless of the nature of the particular program of instruction.

Changes: None.

Comment: A few commenters expressed concerns about the safe harbor reflected in current § 668.14(b)(22)(ii)(C), which permits compensation to recruiters who arrange contracts between an institution and an employer, where the employer pays the tuition and fees for its employees (either directly to the institution or by reimbursement to the employee). One commenter noted that because under this type of contract there is no direct contact between the entity or individual seeking the arrangement and the student, these contracts seem to be permissible. Another commenter asked whether the following type of arrangement would be permissible without this safe harbor: An employee secures contracts for non-degree training that is not eligible for title IV, HEA program funding, and such contracts are billed at a flat rate and are paid for by the employer. This commenter specifically asked whether the employee in this situation may be compensated based on revenue from those contracts.

Discussion: This safe harbor permits compensation that is ultimately based upon success in securing enrollments. Because this is inconsistent with section 487(a)(20) of the HEA, we believe that the safe harbor should not be retained in these final regulations. We agree with the commenter that in some instances compensation to recruiters who arrange contracts between an institution and an employer, where the employer pays the tuition and fees for its employees, would be permissible under the ban on incentive compensation. As previously discussed, we encourage institutions to apply the two-part test provided within the NPRM in evaluating whether a particular compensation practice is permissible. Given the number of possible variables within any particular proposal, the Department is not prepared to say that the examples generally offered by commenters will always be permissible, but we acknowledge that there are circumstances where such arrangements may prove to be compliant with the HEA.

We strongly believe that institutions do not need to rely on safe harbors to protect compensation that complies with section 487(a)(20) of the HEA. Ultimately, the institution must determine whether its compensation is based in any part, directly or indirectly, on securing enrollments or the award of

financial aid. If it is not, such compensation would continue to be permissible even with the removal of the safe harbor from current § 668.14(b)(22)(ii)(C).

Changes: None.

Comment: A number of commenters voiced their support for the safe harbor from current § 668.14(b)(22)(ii)(E), which permits compensation based upon a student's successfully completing his or her educational program or one academic year of his or her educational program, whichever is shorter. Some commenters expressed concern that removal of this safe harbor would eliminate an important safeguard for students because this safe harbor encourages institutions to admit only qualified students. Other commenters noted that to disallow incentive compensation based on completion of an educational program is contrary to the Administration's stated goal of student retention. Several commenters suggested that the Department should measure the positive effect that incentive payments based on completion of an educational program can have on students' educational experience. Another commenter asked whether payments based on a graduated student's employment in the student's field of study would be permitted under the new regulatory framework for incentive compensation.

Discussion: The Department believes that an institution's resolute and ongoing goal should be for its students to complete their educational programs. Employees should not be rewarded beyond their standard salary or wages for their contributions to this fundamental duty. The safe harbor in current § 668.14(b)(22)(ii)(E) permits compensation that is "indirectly" based upon securing enrollments—that is, unless the student enrolls, the student cannot successfully complete an educational program. With the proliferation of short-term, accelerated programs, and the potential for shorter and shorter programs, we have seen increased efforts by institutions to rely upon this safe harbor to incentivize recruiters. Accordingly, we believe that the retention of the current safe harbor can be readily exploited, and that it is not necessary for institutions to appreciate the value of keeping students in school. On balance, we believe that the proliferation of these types of programs justify any benefit that this safe harbor allegedly provided students by encouraging institutions to admit only qualified students.

We disagree with the commenter who stated that removal of this safe harbor is inconsistent with the Administration's goal of increasing student retention in postsecondary education. Institutions should not need this safe harbor allowing incentive payments to recruiters to demonstrate their commitment to retaining students within their program of instruction.

In addition, there is nothing about the making of incentivized payments to recruiters based upon student retention that enhances the quality of a student's educational experience. If the program of instruction has value and is appropriate for a student's needs, a student will likely enjoy a positive educational experience regardless of the manner in which the student's recruiter is compensated.

Finally, the Department's experience has shown that some institutions pay incentive compensation to recruiters based upon claims that the students who the recruiter enrolled graduated and received jobs in their fields of study. Yet, included among the abuses the Department has seen, for example, is a circumstance where a student's field of study was culinary arts, and the so-called employed student was working an entry-level position in the fast food industry. Such a position did not require the student to purchase a higher education "credential." As a result, we believe that paying bonuses to recruiters based upon retention, completion, graduation, or placement remain in violation of the HEA's prohibition on the payment of incentive compensation.

Changes: None.

Comment: Many commenters questioned our rationale for eliminating the safe harbor in current § 668.14(b)(22)(ii)(G), which exempts managerial and supervisory employees who do not directly manage or supervise employees who are directly involved in recruiting or admissions activities, or the awarding of title IV, HEA program funds from the prohibition on receiving incentive payments. These commenters argued that a bright line designation is needed and that the incentive compensation ban should only apply to employees who are involved in direct recruitment or admission of students or decisions involving the award of title IV, HEA aid. Others recommended that we retain this safe harbor, and that we clarify that the words "indirectly or directly" do not apply to the determination of which persons are covered by the prohibition. Several commenters expressed their concerns about having the regulations prohibit compensation practices at any level of an organization, no matter how far removed from actual recruitment, admissions, or financial aid activity. These commenters argued that such an approach would prevent institutions from evaluating top management with respect to student population metrics or any other business or organizational metric that is a function of student enrollment.

A few commenters raised more specific concerns about the compensation of top college officials in situations where the president attends an open house or speaks with potential students who the institution is recruiting, either in a group or individually. Some commenters also asked whether the proposed regulations would permit a president to receive a bonus or other payment if one factor in attaining the bonus or other payment was meeting an institutional management plan or goal that included increasing minority enrollment by a certain percentage.

Finally, a few commenters asked whether institutions can still reward athletic coaches whose student athletes stay in school and graduate.

Discussion: We intend the incentive compensation ban in § 668.14(b)(22)(i) to apply to all employees at an institution who are engaged in any student recruitment or admission activity or in making decisions regarding the award of title IV, HEA program funds. We interpret these employees to include any higher level employee with responsibility for recruitment or admission of students, or making decisions about awarding title IV, HEA program funds. To make this clearer, we are revising § 668.14(b)(22)(iii) to add a definition for the term *entity or person engaged in any student recruitment or admission activity or in making decisions about the award of financial aid.* This new definition expressly includes any employee who undertakes recruiting or admitting of students or who makes decisions about and awards title IV, HEA program funds, as well as higher level employees as specified.

Therefore, the actions of a college president could potentially come within the HEA's prohibition on the payment of incentive compensation. However, the Department does not see how mere attendance at an open house or speaking with prospective students about the value of a college education or the virtues of attending a particular institution would violate the incentive compensation plan. Other activities should be evaluated within the context of the Department's previously discussed two-part test to receive assistance as to whether a particular activity is permissible.

Finally, recruitment of student athletes is not different from

recruitment of other students. Incentive compensation payments to athletic department staff are governed by the restrictions included in § 668.14(b)(22). If the payments are made based on success in securing enrollments or the award of financial aid, the payments are prohibited; however, the Department does not consider "bonus" payments made to coaching staff or other athletic department personnel to be prohibited if they are rewarding performance other than securing enrollment or awarding financial aid, such as a successful athletic season, team academic performance, or other measures of a successful team.

Changes: We have added a definition of the term *entity or person engaged in any student recruitment or admission activity or in making decisions about the award of financial aid* to § 668.14(b)(22)(iii). New paragraph (b)(22)(iii)(C) of this section provides that the term means—

(*1*) With respect to an entity, any institution or organization that undertakes the recruiting or the admitting of students or that makes decisions about and awards title IV, HEA program funds; and

(*2*) With respect to a person, any employee who undertakes recruiting or admitting of students or who makes decisions about and awards title IV, HEA program funds, and any higher level employee with responsibility for recruitment or admission of students, or making decisions about awarding title IV, HEA program funds.

Comment: One commenter asked how the removal of the safe harbor from current § 668.14(b)(22)(ii)(H), which permits an institution to provide a token gift not to exceed $100 to an alumnus or student provided that the gift is not in the form of money and no more than one gift is provided annually to an individual, will affect institutions compensating students for referrals. The commenter asked whether an individual who is referred can be given a scholarship for friends or family of the individual who is referring or a tuition waiver.

Discussion: Section 668.14(b)(22) does not prohibit institutions from providing any commission, bonus, or incentive payment to students who are referrals. Therefore, an individual who is referred to an institution should be able to receive whatever scholarship money or tuition assistance that he or she may otherwise be eligible to receive without violating the HEA.

Changes: None.

Comment: Several commenters asked for clarification regarding the safe harbor in current § 668.14(b)(22)(ii)(J) permitting an institution to award compensation for Internet-based recruitment and admission activities that provide information about the institution to prospective students, refer prospective students to the institution, or permit prospective students to apply for admission online. Specifically, the commenters asked us to clarify that institutions can make payments to third parties that provide Internet-based recruitment and admission services as long as they do not otherwise violate the statutory prohibition. Other commenters asked for confirmation that click-through payments are permitted if the third party is paid based on those who click, not those who enroll. Other commenters requested examples of permitted relationships.

Discussion: The HEA does not prohibit advertising and marketing activities by a third party, as long as payment to the third party is based on those who "click" and is not based in any part, directly or indirectly, on the number of individuals who enroll or are awarded financial aid; therefore, the regulatory language would not prohibit such click-through payments. Further, institutions may make payments to third parties and entities with formal third-party arrangements as long as the parties are not compensated in any part, directly or indirectly, based on success in securing enrollments or the award of financial aid.

Changes: None.

Comment: Many commenters offered suggestions regarding the safe harbors reflected in current § 668.14(b)(22)(ii)(K) and (b)(22)(ii)(L), which both involve payments to third parties for shared services. A number of commenters representing organizations that provide a variety of services to institutions asked for clarification about their continued ability to assist institutions in this way, as long as the compensation arrangements are not prohibited by the HEA. Many commenters asked whether tuition-sharing arrangements with third-parties to secure servicers that include recruitment would be permitted. They questioned whether these arrangements should be treated the same as arrangements involving volume-driven payments. Several commenters expressed concern about the affect these regulations will have on third parties who provide services to assist students who study abroad.

One commenter suggested that entities that provide enrollment services be able to elect to be treated as "third-party servicers," with all of the restrictions, obligations, liabilities, reporting requirements, and oversight that accompany that status.

Other commenters asked whether institutions would be held accountable for the actions of third-party servicers. A few commenters also requested the Department to provide examples of arrangements with third parties that would be permitted under the new regulatory framework (*i.e.,* with the removal of the safe harbors from current § 668.14(b)(22)(ii)(K) and (b)(22)(ii)(L)).

Discussion: The Department understands the value of partnerships between institutions and entities that provide various support and administrative services to these institutions. Such arrangements are permitted under these regulations as long as no entity or person engaged in any student recruitment or admission activity or in making decisions about the award of financial aid (as defined in § 668.14(b)(22)(iii)(C)) is compensated in any part, directly or indirectly, based upon success in securing enrollments or the award of financial aid.

In addition, as the Department stated in the NPRM, arrangements under which an institution is billed based on the number of student files that are processed (*e.g.,* a volume-driven arrangement) are not automatically precluded, provided that payment is not based in any part, directly or indirectly, on success in securing student enrollments or the award of financial aid.

Further, it is longstanding Department policy that an institution is responsible for the actions of any entity that performs functions and tasks on the institution's behalf. The definition of a *third-party servicer* is established in § 668.2; the responsibilities of a third-party servicer are described in § 668.25. No additional language is needed.

Changes: None.

Permissible Compensation Activities

Comment: Many commenters requested clarification on the types of compensation that would be permitted under proposed § 668.14(b)(22) and section 487(a)(20) of the HEA. A few commenters who supported the proposed changes to § 668.14(b)(22) suggested additional alterations to strengthen the language—such as moving language we had included in the NPRM preamble to the regulatory text—to ensure that incentive payments are not based "in any part" on success in securing enrollments or financial aid.

In addition, several commenters suggested that more than two changes in pay in a calendar year should be considered evidence that the payments are incentive compensation.

These commenters also requested guidance about allowable salary

adjustments, including whether raises (for promotions) would be permitted and whether reductions (for demotions) would be permitted. Some commenters requested clarification on whether a salary could be paid. One commenter asked whether benefits could be paid at differential rates by class of employee or on a sliding scale by salary.

Discussion: Based on these comments, the Secretary agrees that some modifications to the language in proposed § 668.14(b)(22) would be helpful to ensure that incentive payments are not based "in any part" on success in securing enrollments or financial aid. In particular, we agree that it is appropriate to add language to avoid confusion as to whether some part of an individual's compensation may be based on incentive compensation. For this reason, we are revising § 668.14(b)(22)(i) to reinforce the idea that compensation must not be based in any part, directly or indirectly, on success in securing enrollments or the award of financial aid.

In addition, we support revising the regulations to provide that an employee who receives multiple compensation adjustments in a calendar year is considered to have received adjustments based upon success in securing enrollments or the award of financial aid in violation of the incentive compensation ban in § 668.14(b)(22) if those adjustments create compensation that is based in any part, directly or indirectly, upon success in securing enrollments or the award of financial aid.

Finally, with respect to the requests for clarification on allowable salary adjustments, we note that individuals may be compensated in any fashion that is consistent with the prohibition identified in section 487(a)(20) of the HEA. Accordingly, while not commenting on any specific compensation structure that an institution may choose to implement, the Department recognizes, for example, that institutions often maintain a hierarchy of recruitment personnel with different amounts of responsibility. As long as an institution complies with section 487(a)(20) of the HEA, it may be appropriate for an institution to have salary scales that reflect an added amount of responsibility. Institutions also remain free to promote and demote recruitment personnel, as long as these decisions are consistent with the HEA's prohibition on the payment of incentive compensation. Finally, it is appropriate to pay recruitment personnel a fixed salary.

Changes: We have revised § 668.14(b)(22)(i)(A) (which has been redesignated as § 668.14(b)(22)(i)) to clarify that a prohibited incentive compensation includes any commission, bonus, or other incentive payment based in any part, directly or indirectly, upon success in securing enrollments or the award of financial aid to any person or entity engaged in any student recruitment or admission activity or in making decisions regarding the award of title IV, HEA program funds.

In addition, we have redesignated proposed § 668.14(b)(22)(i)(B) as § 668.14(b)(22)(i)(A) and added a new paragraph (b)(22)(i)(B) to provide that, for the purposes of this paragraph, an employee who receives multiple adjustments to compensation in a calendar year and is engaged in any student enrollment or admission activity or in making decisions regarding the award of title IV, HEA program funds is considered to have received such adjustments based upon success in securing enrollments or the award of financial aid if those adjustments create compensation that is based in any part, directly or indirectly, upon success in securing enrollments or the award of financial aid.

Finally, we have revised § 668.14(b)(22)(ii) to provide that eligible institutions, organizations that are contractors to eligible institutions, and other entities may make merit-based adjustments to employee compensation provided that such adjustments are not based in any part, directly or indirectly, upon success in securing enrollments or the award of financial aid.

Comment: Commenters raised a number of questions related to the two-part test the Department has offered that will demonstrate whether a compensation plan or payment complies with the statute and the implementing regulations. Many commenters seemed confused about the application of the two-part test and raised a wide range of specific questions about employment possibilities and compensation practices. For example, some commenters asked for clarification about the types of items that could be considered something of value, such as letters of recommendation to volunteer interns.

Several commenters asked that we include the language of the two-part test in the regulatory text.

Finally, one commenter asserted that the two-part test will not add clarity on compensation issues but instead will raise questions about the legality of certain types of merit-based compensation systems that seem to fall outside the scope of compensation restriction but that could fail to satisfy the two-part test.

Discussion: As discussed earlier in this preamble, the Department has described a two-part test for evaluating whether a payment constitutes a commission, bonus, or other incentive payment based in any part, directly or indirectly, upon success in securing enrollments or the award of financial aid to any person or entity engaged in any student recruitment or admission activity or in making decisions regarding the award of title IV, HEA program aid in violation of the ban reflected in § 668.14(b)(22)(i). The Department first described this test in the preamble to NPRM. (*See* 75 FR 34818 (June 18, 2010).) The test consists of the following two questions, the answers to which will permit an institution to know whether the compensation is considered incentive compensation:

(1) Whether the payment is a commission, bonus, or other incentive payment, defined as an award of a sum of money or something of value paid to or given to a person or entity for services rendered; and

(2) Whether the commission, bonus, or other incentive payment is provided to any person based in any part, directly or indirectly, upon success in securing enrollments or the award of financial aid, which are defined as activities engaged in for the purpose of the admission or matriculation of students for any period of time or the award of financial aid.

If the answer to each of these questions is yes, the payment would not be permitted under section 487(a)(20) of the HEA or § 668.14(b)(22). The Department merely provided this test as a tool to help institutions evaluate compensation practices they may consider implementing. The test does not add any substantive requirements that are not otherwise included in § 668.14(b)(22)(i). For this reason, we do not think it is necessary or appropriate to include the text of the test in the regulations.

The Department further notes that, as a general matter, it does not believe that the provision of letters of recommendation to volunteer interns would constitute a proscribed incentive payment.

Finally, we disagree with the comment that the two-part test will not serve generally to answer institutions' questions regarding a particular compensation plan. As previously stated, we believe that the prohibition identified in section 487(a)(20) of the HEA is clear and that institutions should not have difficulty maintaining

compliance with the new regulatory language. To the extent an institution has questions about what it intends to do, the Department has offered the two-part test as an aid to reaching a proper conclusion. To the extent that an institution does not wish to use the test to assist it in evaluating its practices, it is not required to do so.

Changes: None.

Comment: A number of commenters questioned the use of the term "indirectly" in the prohibition on incentive compensation in proposed § 668.14(b)(22). They expressed concern about the broad scope of this term and believed that interpretive discord will result from its inclusion in § 668.14(b)(22). These commenters argued that any compensation involving an institution of higher education is based indirectly on success in securing enrollments and asked how far removed an activity must be in order for it not to be considered indirectly related. Other commenters specifically requested that we define the term "indirectly."

Several commenters suggested that proposed § 668.14(b)(22)(i)(A) should use the term "solely" rather than "directly or indirectly" (*i.e.,* "it will not provide any commission, bonus, or other incentive payment based solely upon success" rather than "it will not provide any commission, bonus, or other incentive payment based directly or indirectly upon success"). These and other commenters alleged that the language in proposed § 668.14(b)(22)(i)(A) is not consistent with congressional intent. Many of these commenters cited to the conference report, which states that the use of the term "indirectly" does not mean that institutions are prohibited from basing salaries on merit; they may not, however, be based "solely" on the number of students recruited, admitted, enrolled, or awarded.

Discussion: The Department does not agree with the view that the use of the phrase "directly or indirectly" will lead to interpretation problems or that it is inconsistent with congressional intent. Given the Department's experience with how the safe harbor in current § 668.14(b)(22)(i)(A), which permits up to two salary adjustments per year provided that they are not based solely on the number of students recruited, admitted, enrolled, or awarded financial aid, has been abused, the Department does not believe that it serves congressional intent to limit the incentive compensation ban in section 487(a)(20) of the HEA to those payments that are based solely upon success in securing enrollments or the award of financial aid. The Department believes that, consistent with section 487(a)(20) of the HEA, incentive payments should not be based in any part, directly or indirectly, on success in securing enrollments or the award of financial aid.

The safe harbor in current § 668.14(b)(22)(i)(A) has led to allegations in which institutions conceded that their compensation structures included consideration of the number of enrolled students, but averred that they were not *solely* based upon such numbers. In some of these instances, the substantial weight of the evidence suggested that the other factors purportedly analyzed were not truly considered, and that, in reality, the institution based salaries exclusively upon the number of students enrolled. After careful consideration, the Department determined that removal of the safe harbor was preferable to retaining but revising the safe harbor. For example, we considered suggestions that we change the word *solely* to some other modifier, such as "primarily" or "substantially," but ultimately determined that doing so would not correct the problem. With such a change, we believe the evaluation of any alternative arrangement would merely shift to whether the compensation was "primarily" or "substantially" based upon enrollments. Such a shift would not reduce the ability of an unscrupulous actor to claim that student enrollments constituted this lesser factor within a recruiter's evaluation and would foster the same sorts of abuses that have become apparent by institutions attempting to assert that their compensation practices are not solely based on enrollments.

Changes: None.

Comment: A number of commenters raised questions about proposed § 668.14(b)(22)(ii), which allows eligible institutions, organizations that are contractors to eligible institutions, and other entities to make merit-based adjustments to employee compensation provided that such adjustments are not based upon success in securing enrollments or the award of financial aid. They expressed concern that limiting merit-based adjustments to those that are not based upon success in securing enrollments or the award of financial aid would make it impossible for them to award merit increases for employees whose job it is to enroll students. They noted that there are no standard evaluative factors concerning enrollment that are not directly or indirectly based on securing enrollments.

Some commenters requested clarification about whether an increase could be based on seniority or length of employment, including whether a retention bonus could be paid based on the employee's retention at the institution if it is paid evenly to all employees.

Some commenters argued that the regulations should recognize and permit compensation based on the performance of, and success at, the core job functions of admissions representatives and financial aid officials. They questioned how it would be possible to measure employee performance without evaluating success. They asked that we provide concrete guidance about how institutions can make salary adjustments without violating the incentive compensation prohibition.

Discussion: Section 668.14(b)(22) does not prohibit merit-based compensation for financial aid or admissions staff. An institution may use a variety of standard evaluative factors as the basis for this type of compensation; however, consistent with section 487(a)(20) of the HEA and § 668.14(b)(22), an institution may not consider the employee's success in securing student enrollments or the award of financial aid in providing this type of compensation. Further, an increase in compensation that is based in any part either directly or indirectly on the number of students recruited or awarded financial aid is prohibited.

As previously mentioned, many institutions currently claim to evaluate their recruitment personnel on a series of qualitative factors, as well as on the number of enrolled students, to demonstrate compliance with the safe harbor reflected in current § 668.14(b)(22)(i)(A), which prohibits compensation based solely on the number of students enrolled. As a result, it appears that these institutions have identified other factors that are not dependent upon student enrollments that we believe could by themselves be considered for making a merit-based compensation decision. In addition, seniority or length of employment is an appropriate basis for making a compensation decision separate and apart from any consideration of the numbers of students enrolled. Finally, as many commenters from groups representing admissions personnel noted, as a general matter, recruitment personnel should be compensated with a fixed salary to ensure that their ability to focus on what is in a student's best interest is not compromised.

Changes: None.

Comment: Several commenters raised issues about the relationship between an institution's goals and payments to employees. Many asked whether

employees could be rewarded through profit-sharing or other payments for success in meeting retention, graduation, and placement goals as long as they are not rewarded for the number of students recruited and admitted. These commenters requested that we define an acceptable percentage of an employee's compensation adjustment that can be based on the number of students recruited, admitted, enrolled, or awarded financial aid.

One commenter asked that we clarify whether payments tied to overall institutional revenues, including profit-sharing, pension, and retirement plans are allowed. A number of commenters asked more broadly whether such plans would be permissible. A few commenters requested changes to incorporate the distribution of profit-sharing or bonus payments under certain circumstances, such as when a payment is made to a broad group of employees.

Discussion: While there is no statutory proscription upon offering employees either profit-sharing or a bonus, if either is based in any part, directly or indirectly, upon success in securing enrollments or the award of financial aid, it is not permitted under section 487(a)(20) of the HEA or § 668.14(b)(22).

The Department agrees with commenters that there are circumstances when profit-sharing payments should be permitted. Under proposed § 668.14(b)(22), an institution may distribute profit-sharing payments if those payments are not provided to any person who is engaged in student recruitment or admission activity or in making decisions regarding the award of title IV, HEA program funds. The Department believes that such payments are consistent with the HEA as they are not being made to a particular group who is active in admissions or financial aid.

For this reason, we are making a change to § 668.14(b)(22)(ii) to provide that institutions may make payments, including profit-sharing payments, so long as they are not provided to any person who is engaged in student recruitment or admission activity or in making decisions regarding the award of title IV, HEA program funds.

Changes: We have revised § 668.14(b)(22)(ii) to clarify that, notwithstanding the ban in § 668.14(b)(22)(i), eligible institutions, organizations that are contractors to eligible institutions, and other entities may make profit-sharing payments, so long as such payments are not provided to any person who is engaged in student recruitment or admission activity or in making decisions regarding the award of title IV, HEA program funds.

Comment: Several commenters asked us to clarify what kinds of activities would not be considered under the definition of *securing enrollments or the award of financial aid.* They asked that we revise the regulations to provide explicitly that payments based on any additional activities are not allowed if they are directly or indirectly based on enrollment or the awarding of aid.

Other commenters raised questions about the use of "aggregators," that is, entities that assist an institution with the institution's outreach efforts. These efforts include but are not limited to, identifying students, offering counseling and information on multiple institutions, and encouraging potential students to fill out an application directly with the individual institutions. Aggregators are paid based on the student remaining at the institution for a certain time period rather than based on the fact that the student enrolls. Commenters asked us to clarify whether these practices are permitted under section 487(a)(20) of the HEA and § 668.14(b)(22).

Some commenters focused on arrangements under which institutions pay third parties for student contact information and asked whether such information may be sorted or qualified. Further, they questioned whether institutions would be permitted to pay only for information that yields actual contact with a student. They asked that we confirm that institutions may pay students for contact information on a per person basis as long as payments are not based on the number of students who apply or enroll. In addition, they suggested that we allow qualitative factors to be included in the consideration of the price to provide incentives to third parties to appropriately identify students that more closely fit an institution's profile.

Some commenters believed that the proposed definition of *securing enrollments or the award of financial aid* does not make it clear that the activities are prohibited through the completion of a student's educational program.

Discussion: The Department agrees that it would be helpful to clarify the type of activities that are and are not considered securing enrollments or the award of financial aid. For this reason, we have revised the definition of securing enrollments or the award of financial aid to specifically include (as examples) contact through preadmission or advising activities, scheduling an appointment for the prospective student to visit the enrollment office or any other office of the institution, attendance at such an appointment, or involvement in a prospective student's signing of an enrollment agreement or financial aid application (see § 668.14(b)(22)(iii)(B)(*1*) of these final regulations).

We also revised the definition to clarify that it does not include making a payment to a third party for the provision of student contact information provided that such payment is not based on any additional conduct by the third party, such as participation in preadmission or advertising activities, scheduling an appointment to visit the enrollment office or any other office of the institution or attendance at such an appointment, or the signing, or being involved in the signing of a prospective student's enrollment agreement or financial aid application (see § 668.14(b)(22)(iii)(B)(*2*) of these final regulations).

With respect to the comments requesting guidance on "aggregators," we do not believe it is necessary or appropriate for the Department to indicate whether these types of activities would, across the board, be permitted. Each arrangement must be evaluated on its specific terms. As noted earlier in this preamble, we believe any institution can determine whether a payment it intends to make is prohibited by § 668.14(b)(22) by applying the two-part test we have described. Specifically, the first step for an institution in determining if payment for an activity or action is considered incentive compensation is to evaluate whether the entity is receiving something of value, then to determine whether the payment is made based in any part, directly or indirectly, on success in securing enrollments or the award of financial aid.

Finally, we agree with commenters that the definition of the term *securing enrollments or the award of financial aid* should be revised to specify that these activities include activities that run throughout completion of the student's educational program.

Changes: We have revised the definition of securing enrollments or the award of financial aid in § 668.14(b)(22)(iii)(B) to provide more detail about actions that are considered to be covered by the definition. We also have revised the definition to clarify that it includes activities through the completion of an educational program.

Comment: Numerous commenters requested that the Department offer guidance on the practical implementation of the proposed definitions. Many expressed concern about our stated intention to address

only broadly applicable principles rather than responding to questions on individual compensation issues. These commenters asserted that institutions need guidance before they should be the subject of an investigation or legal action. They raised concerns about the confusion that could result without additional clarification and the attendant costs to partners in the student aid process in "today's legal environment." They believed that the Department already knows that guidance will be needed based on our pre-2002 experiences and noted that issuing guidance is a fundamental purpose of the Department and should be continued.

Discussion: The Department believes the proposed language is clear and reflective of section 487(a)(20) of the HEA. As modified, it is designed to appropriately guide institutions as they evaluate compensation practices. To the extent that ongoing questions arise on a particular aspect of the regulations, the Department will respond appropriately in a broadly applicable format and will distribute the information widely to all participating institutions. This response may include a clarification in a Department publication, such as the Federal Student Aid Handbook or a Dear Colleague Letter. The Department does not intend to provide private guidance regarding particular compensation structures in the future and will enforce the regulations as written.

Changes: None.

Satisfactory Academic Progress (§§ 668.16(e), 668.32(f), and 668.34)

General

Comment: Many commenters supported the proposed changes to the Satisfactory Academic Progress (SAP) regulations. Several commenters noted that the consolidation of the SAP requirements into § 668.34 would ease compliance and suggested that it would be helpful to revise the Federal Student Aid (FSA) Handbook to mirror the new organization of the requirements in the regulations.

Several commenters noted that they appreciated that the proposed SAP regulations retain the flexibility provided under the current regulations for institutions to establish policies that best meet the needs of their students.

Many commenters expressed support for the proposed changes to the SAP regulations because they viewed them as a means for helping hold students accountable for their academic goals earlier in their careers, which they believed would lead to lower student debt levels. Several commenters noted that their current policy and practices either met or exceeded the requirements in the proposed regulations.

Many commenters supported, in particular, the definition of the terms *financial aid warning* and *financial aid probation* as well as the standardized definitions of other terms related to SAP. These commenters stated that this standardization would lead to a more consistent application of the SAP regulations among institutions, which, in turn, will make them more understandable to students.

Many commenters also supported the SAP regulations because they give those institutions that choose to evaluate SAP more frequently than annually the ability to use a financial aid warning status, which they viewed as being beneficial to students. They stated that such a warning would lead to early intervention for students who face academic difficulties. Commenters also noted that the financial aid warning status will allow financial aid offices to strengthen their SAP policies to encourage students to use designated support services on campus and lead to further student success.

Discussion: The Department appreciates the support of its efforts to improve program integrity through its SAP regulations. With regard to the comment recommending that we revise the FSA Handbook to align it with the changes we have made in the SAP regulations, we will take this recommendation into account during the next revision of the FSA Handbook.

Changes: None.

General

Comment: Several commenters did not support the proposed changes to the SAP regulations. Two commenters stated that the Department should delay implementation of the SAP regulations, including proposed § 668.34, so that we can resubmit these proposals for negotiation and evaluation in a future negotiated rulemaking proceeding. These commenters argued that the Department had not made a sufficient argument for what would be gained by the changes, and how these benefits would justify the additional burden imposed upon institutions by these regulations.

Two commenters stated that institutions were in the best position to design and implement a satisfactory academic progress policy that fit their institutional needs, and that the current regulations were sufficient for achieving this purpose. These commenters asserted that the proposed changes were intrusive and would lead to increased audit exceptions. These commenters also noted that the Department should consider incentives to encourage institutions to research student success in light of their own SAP policies. One commenter stated that the proposed regulations were too prescriptive, and that institutions would require significant guidance in the FSA Handbook in order to be able to comply with the new regulations.

Two commenters stated that while they generally agreed with the Department's desire to clarify the SAP regulations and with the proposed approach reflected in the NPRM, the regulations had a number of unintended consequences. These commenters indicated that the Department's proposal would force institutions to choose whether to take on additional workload by evaluating students each term, or to take on the additional workload caused by the dramatic increase in appeals. One of the commenters noted as an example an institution that has a number of Alaskan Native students to whom it provides significant support, particularly early in their careers; in this case, the commenter stated that these students would be significantly harmed by these SAP regulations as the students often cannot remedy their academic problems in a short period of time. Both of these commenters noted that while the Department believes that it has to address abuses with the current regulations, that it should weigh this against the unintended consequences of the proposed regulations, which include increased workload for institutions and unfair impact on certain groups of students.

Discussion: The Department disagrees with the commenters who suggested that these regulations should be resubmitted for the negotiated rulemaking process. The proposed changes to the SAP regulations in §§ 668.16(e), 668.32(f), and 668.34 have already been through the negotiated rulemaking process. In fact, the negotiators reached tentative agreement on these proposed changes. During negotiations, most negotiators stated that it was appropriate for the Department to provide certain flexibilities for those institutions that chose to check on the satisfactory academic progress of students more often than was required by the statutory minimum of annually. Many of the negotiators said that they supported the proposed changes to the SAP regulations because they continued to provide significant flexibilities for institutions to craft SAP policies that met the needs of their student bodies

while still preserving program integrity. For the commenter who suggested that the Department should encourage institutions to study the consequences of their SAP policies and allow incentives for doing so, we will take this under advisement when we next have the opportunity to develop experimental site proposals.

We do not agree with the commenters who suggest that the SAP regulations are too prescriptive or intrusive. Section 484(c)(1)(A) of the HEA requires that an eligible student be making satisfactory progress towards program completion, and that institutions check at least annually for programs longer than a year, that a student is annually meeting that requirement. These regulations do not require institutions to do any more than what is required by the HEA, and are not more difficult to comply with than the current regulations. Therefore, institutions should not experience increased incidents of noncompliance. We will continue to provide any applicable and needed guidance in the FSA Handbook to assist institutions in complying with the regulations.

We do agree with the commenters who stated that an increase in SAP monitoring to a payment period by payment period basis would increase administrative burden. However, institutions are free to continue to monitor as frequently as they currently do, and are not required to change their SAP policy and monitor every payment period. As for the unintended consequences for particular groups of students, these regulations allow for institutions to craft SAP policies that best fit the needs of their students. An institution could evaluate the needs of any special student groups and find ways to work effectively with those students. For example, a specific student may need to have assistance developing an academic plan that will enable him or her to be successful.

Changes: None.

Delayed Implementation

Comment: Several commenters suggested that implementation of the proposed changes to §§ 668.16(e), 668.32(f) and 668.34 should be delayed for a couple of years to allow institutions to prepare their policies and procedures to comply with the regulatory changes. One commenter recommended that implementation be delayed until the 2012–13 award year to allow for institutions to make changes to their monitoring systems. Another commenter encouraged the Department to delay implementation of the regulations for SAP, but noted that if we do not delay implementation, then the Department should issue guidance as to how the new regulations will affect summer crossover payment periods. This commenter expressed concern that, without this additional guidance, it will be unclear as to which SAP regulations apply to students enrolled in summer.

Discussion: While the Department appreciates that some institutions may have to make changes to computer monitoring systems, or written policies and procedures, we do not believe that the changes to the SAP regulations are extensive enough to warrant delayed implementation. Institutions that may have to adjust or change their SAP policy will have to publicize such a change to students, and let students know when any new SAP policy is effective. As such, the summer crossover payment period would be addressed by the school's new policy and would be subject to the effective date of the school's new policy. For example, a school may decide that for the purpose of this policy change, a 2011–12 summer crossover period will be subject to their current SAP policy and procedures, as part of the 2010–11 award year. This would be acceptable, and should be addressed in the school's notification to their students of the effective date of any new policy.

Changes: None.

Satisfactory Academic Progress (§ 668.34)

Comment: Two commenters stated that the term "financial aid applicants" should be substituted for the word "students" in § 668.34. The commenters indicated that students who had not applied for financial aid would be confused by notifications about eligibility under the SAP regulations. These commenters argued that institutions should only be required to send notifications to financial aid applicants, and that the proposed requirement that notifications be sent to all of an institution's students is unreasonable.

Discussion: There is no requirement in the proposed regulations for schools to notify students who are not applying or receiving title IV, HEA aid of their eligibility under SAP. These regulations do not impose such a requirement. Moreover, we do not believe it is necessary to replace the term "student" with the term "financial aid applicant" in these regulations since we are referring to general student eligibility criteria, which affect not only financial aid applicants, but recipients of title IV, HEA funds as well. There is no attempt to regulate any other students in these regulations.

Changes: None.

Consistency Among Categories of Students

Comment: One commenter noted that proposed § 668.34(a)(2) retained the language from current § 668.16(e)(3) that the institution's policy must be consistent among categories of students. This commenter questioned whether, within the categories of students, an institution could evaluate sub-categories of students differently. For example, within the group of undergraduate students, could an institution choose to evaluate freshmen and sophomore students every payment period but upperclassmen only once a year. The commenter noted that this approach might be used if the institution determined that students in the first two years needed more intervention, and that after that time students were more likely to remain enrolled until graduation. The commenter also asked if this approach is allowable, could the institution use a financial aid warning for those students who are evaluated every payment period.

One commenter noted that proposed § 668.34(a)(2) does not appear to allow for different evaluation periods based upon the type of student or program being evaluated. For example, this commenter noted that an institution may want to evaluate undergraduates each payment period and evaluate graduate students annually. The commenter proposed changes to the regulatory language that would allow for such a difference.

Discussion: These regulations retain the flexibility for an institution to evaluate different categories of students differently, as long as the policy provides for consistent application of standards within each of the categories of students. Institutions retain flexibility to create a policy within those groups of students to best meet the needs of its student body. If they wish to institute a policy that evaluates freshmen and sophomores every payment period, and juniors and seniors annually, an institution is free to do so. Such a policy would only allow for the automatic financial aid warning status to be used for those students who are evaluated every payment period. This would, however, allow for a policy that is sensitive to the needs of the institution's student body. For this reason, we do not believe that any changes are needed to respond to the commenters' concerns.

Changes: None.

Frequency of Evaluation

Comment: One commenter supported the proposed regulations, but expressed concern that an institution may not have

time prior to the start of the next term to evaluate SAP, thereby resulting in students owing a repayment of title IV, HEA funds. Several commenters noted that for some academic periods there is not enough time to evaluate students prior to the beginning of the next payment period. These commenters noted that this is particularly true for institutions with quarters and even most traditional calendar schools for the period after the summer term. One commenter stated that, in order to accommodate the realities of institutions that use the quarter system, all institutions that monitor their students' satisfactory academic progress more frequently than annually should be allowed to use the financial aid warning status.

Several commenters argued that the Department should not require institutions to evaluate more frequently than annually. Numerous commenters did not agree with the Department giving additional flexibilities to those institutions that evaluate the satisfactory academic progress of its students each payment period rather than annually.

One commenter stated that it was unfair to "pressure" institutions to check a student's satisfactory academic progress more frequently than once per year, particularly if they have stable student populations and good graduation rates. This commenter argued that these types of institutions should be allowed to use the flexibility of the financial aid warning status even if they monitored SAP less frequently than every payment period. Another commenter representing an association noted that some of its members objected to what they perceived as the Department restricting flexibility when an institution is in compliance with the minimum yearly requirement established under section 484(c)(1)(A) of the HEA. Another commenter argued that it would decrease student success to require all institutions to check satisfactory progress each payment period, as students would not know from one term to the next what their eligibility for aid might be. This commenter expressed concern that this would particularly disadvantage low income and minority students.

One commenter argued that by strengthening other parts of the SAP regulations, only one probationary period for example, abuses could be curtailed, and institutions would not be encouraged to create more lenient policies.

Discussion: The Department appreciates the fact that there could be an increased administrative burden for some institutions to change the frequency with which they monitor the satisfactory academic progress of their students to a payment period-by-payment period basis. However, changing the frequency for monitoring satisfactory academic progress is not required under these regulations; institutions still have the flexibility to create a policy that best meets the needs of their student body. If an institution believes, for example, that evaluating SAP every payment period would create too much uncertainty for their students, then they are not required to develop such a policy.

With respect to the commenter who suggested that institutions with stable student populations and good graduation rates should be able to use the flexibility of the financial aid warning status even if they monitored SAP on an annual basis, we do not believe it is appropriate to allow extended periods of financial aid warning because this is essentially providing title IV, HEA aid to students who are not making progress towards program completion. We understand that some institutions believe that the Department is unfairly placing restrictions on institutions that choose to stay with minimum annual evaluations, or to evaluate less frequently than every payment period. However, we do not believe that it is appropriate to continue to allow a student who does not meet eligibility criteria to continue to receive title IV, HEA funds without a formal intervention by the institution in the form of an appeal approval or an academic plan.

Changes: None.

Comment: Several commenters noted that students who attend quarter schools face an inequity under proposed § 668.34 in that they could lose title IV, HEA eligibility after 20 weeks, whereas for a student at a semester school, they could lose title IV, HEA eligibility after 30 weeks, which is an academic year. These commenters asserted that this subjects the student at a quarter school to more rigorous evaluation. These commenters expressed concern that institutions might choose to evaluate the SAP of their students annually in order to level the playing field for their students, as well as relieve administrative burden.

One commenter expressed concern that the term "annually" in § 668.34 was subject to interpretation and that questions would arise as to whether this term referred to every calendar year, every 12 months, or every academic year. This commenter suggested that the Department revise § 668.34(a)(3)(ii) and (d) to refer to "every academic year" rather than "annually".

Discussion: The Department notes that a student in a quarter program would be evaluated three times in an academic year, while the student in a semester program would be evaluated twice in an academic year. While some institutions may view this as a more rigorous evaluation, it also allows more opportunities for intervention by the institution. We would hope that an institution would develop a policy that would best serve the needs of students, and that if the institution believes that more frequent evaluations would be beneficial, that it would work with faculty and other parties to attempt to make such a review possible, for example, by shortening the amount of time that it takes grades to become available for evaluation.

The Department notes that institutions that currently review student progress annually choose to review all students at a specific point in time, such as at the end of the spring term or spring payment period. The Department agrees that this is an appropriate and reasonable institutional policy for an institution that reviews academic progress annually. We do not believe that further regulatory language is necessary to specify that the reviews happen every academic year because if the review happens annually, it necessarily will happen every academic year.

Changes: None.

Comment: Several commenters indicated that the proposed SAP regulations will not work well for nonterm and nonstandard term programs. They noted that because students in these types of programs complete payment periods at various points during the year, institutions with these types of programs would be unable to evaluate SAP at the end of each payment period. One commenter specifically asked the Department to clarify how SAP in a nonterm program could be evaluated under proposed § 668.34. Another commenter noted that institutions with 8-week terms would find it overly burdensome to evaluate academic progress every payment period. This commenter indicated that an unintended consequence of the proposed changes reflected in § 668.34 would be that institutions with nonstandard term or nonterm programs would evaluate less frequently than currently, due to the administrative burden. Several commenters suggested that to avoid this unintended consequence, the regulations should allow institutions with nonterm programs to set evaluations based upon

calendar dates rather than payment period completion. One commenter stated that these "scheduled satisfactory academic progress calculation" periods could then be used as the basis for the student's continued receipt of aid or placement on financial aid warning. This commenter also suggested that we revise § 668.34 to make the financial aid warning status available to those institutions with nonterm programs that evaluate student academic progress more frequently than annually but not in conjunction with payment periods. The commenter expressed that much confusion will result if the Department does not address how institutions with nonterm programs, where the annual review date chosen for SAP review does not coincide with a payment period, can comply with these regulations.

Another commenter stated that the Department should consider studying different instructional delivery models in order to determine how to best regulate accountability for institutions that need to evaluate SAP for students in nonstandard programs.

Discussion: The Department recognizes the complicated monitoring that institutions with nonterm and nonstandard term programs will need to implement to comply with § 668.34 for evaluating the academic progress of students in these programs, if they choose to evaluate SAP on a payment period-by-payment period bases. This is because, for these programs, institutions could have students completing payment periods on a daily basis. We understand why institutions may find it easier to set one particular calendar date to evaluate the SAP of all of their students in these programs. However, we do not believe that this approach will work because on any given date, any particular student could be at the beginning, middle, or end of a payment period. The SAP review must account for completed coursework, and students in the middle of a payment period, for example, might still have days or weeks to go to finish that work. We do believe that the institution could set a particular time period when it evaluates SAP for all of its students. For example, the institution could set a policy that SAP evaluation will occur for all students upon the completion of the payment period in a given month(s). The evaluation would then include all of the coursework that an individual student completes for the payment period completed in that month. We do not believe that evaluating students at any moment in time other than at the end of a payment period is an appropriate measure of the student's current progress towards program completion, as it is not generally possible to evaluate the work in progress. By evaluating all of the most recently completed work, a SAP evaluation will be most accurate in portraying a student's progress, and will enable the institution to evaluate SAP prior to making the payment for the next payment period thereby insuring payments only to eligible students. We have, therefore, made a change to the proposed regulations to clarify that the evaluation must occur at the end of a payment period. With regards to the commenter who suggested that the Department should conduct a study in order to determine the best way to regulate accountability for students in nontraditional programs, we will take this recommendation under advisement.

Changes: We have revised § 668.34(a)(3)(ii) to provide that, for programs longer than an academic year in length, satisfactory academic progress is measured at the end of each payment period or at least annually to correspond to the end of a payment period.

Comment: Two commenters noted that the proposed SAP regulations do not address students with disabilities and their needs, especially during the appeals process, as such students may need several appeals.

Discussion: When evaluating a student appeal under § 668.34, an institution may take into consideration factors that could have affected the student's academic progress. These factors can include whether the student has a disability or other extenuating circumstances. Additional considerations may also be given in an academic plan for a student who has a disability as long as applicable title IV, HEA program requirements are followed. Therefore, we do not believe that it is necessary to include any additional regulatory language on evaluating the SAP of students with disabilities or the appeals process for those students.

Changes: None.

Comment: One commenter, who expressed concern that the proposed SAP regulations were cumbersome, asked whether the regulations would permit two specific types of situations. First, the commenter asked whether an institution could retain the ability to utilize the financial aid warning status if its SAP policy stated that it would begin monitoring a student's academic progress after the student's first academic year, and then continue to monitor the student's progress every payment period thereafter. Second, the commenter asked whether a student could continue to receive title IV, HEA aid without further appeal if the student is in financial aid warning status and he or she submits, and continues to meet the terms of, an acceptable academic plan.

Discussion: The proposed regulations allow for significant flexibilities for institutions. If the institution wishes to monitor at different periods in time, such as at the end of the first year, and then by payment period after that, it is free to do so. In this situation, only those students who are evaluated each payment period may receive the automatic financial aid warning status.

With regard to the second scenario described by the commenter, a student who has appealed a determination that he or she is not meeting satisfactory academic progress and is attending his or her program under an approved academic plan because he or she is on financial aid warning status remains eligible for title IV, HEA aid as long as he or she continues to meet the conditions of that plan. In such a situation, the student's academic progress would simply be re-evaluated at the same time as the institution's other title IV, HEA aid recipients are evaluated, unless its policy called for a different review period.

Changes: None.

Comment: One commenter noted that at his institution summer is considered a trailing term, and the institution evaluates SAP at the end of the spring term. The commenter asked whether summer coursework could be used retroactively as part of the student's academic plan. The commenter also questioned whether the institution could state in its SAP policy that it reviews SAP after all work for the academic year is completed. Under this approach, the institution would review some students in the spring and others after they complete summer term. Another commenter asked how to handle an optional summer term.

Discussion: An institution may choose to state in its SAP policy that it monitors academic progress at the end of the student's completion of the academic year. These SAP regulations still leave the flexibility to the institution to determine what policy will best serve its students. We note, however, that under an institution's SAP policy, the institution must evaluate all of the student's coursework at some point, and that the financial aid warning status described in § 668.34(b) is only available to institutions that evaluate a student's academic progress every payment period.

If an institution evaluates SAP by payment period, then it would evaluate a student's academic progress at the end of each payment period that the student attends. If the institution evaluates SAP

annually, then it would evaluate all of the coursework that the student has attempted and completed since the last annual evaluation to determine whether the student is making satisfactory academic progress. There are no periods of the student's attendance that are not considered in the evaluation.

Changes: None.

Minimum GPA

Comment: One commenter noted that, under current § 668.34(b), a student must have a "C" average or its equivalent after two years in order to make satisfactory academic progress. The commenter noted that the Department's guidance in this area has been that the student must have a "C" average or its equivalent after two years of attendance, regardless of the student's enrollment status during that time. The commenter stated that proposed § 668.34(4)(ii) states that the "C" average is required at the end of two academic years. The commenter asked the Department to clarify whether the use of the phrase "two academic years" as opposed to the phrase "two years" results in any substantive change in how the Department interprets this requirement. Another commenter stated that the current regulations are sufficient in this area, because they allow institutions to interpret the phrase "two years" in the way that is best for their students.

Discussion: The term "academic year" is used in section 484(c)(1)(B) of the HEA, which states that a student is considered to be maintaining satisfactory academic progress if the student has a cumulative "C" average, or its equivalent or academic standing consistent with the requirements for graduation, as determined by the institution, at the end of the second such academic year. We changed the reference from "year" to "academic year" in § 668.34 to more closely align this regulatory language with the corresponding statutory language. This change, however, does not alter the Department's interpretation that this requirement means that a student must have a "C" average or its equivalent after two years of attendance, regardless of the student's enrollment status.

Changes: None.

Pace

Comment: Two commenters noted that proposed § 668.34(a)(5)(ii) states that an institution is not required to include remedial coursework when determining the attempted and completed hours for purposes of evaluating a student's pace toward completion of the program. Both commenters requested clarification that an institution may, but is not required to, include remedial coursework when making its SAP determination.

Discussion: It is the Department's longstanding position that an institution is not required to include remedial courses when calculating the student's progress towards program completion. While an institution is not required to include remedial courses when calculating pace under the SAP analysis, it may do so as long as its SAP policy otherwise meets the requirements in § 668.34.

Changes: None.

Comment: One commenter, who noted that its students enter a program at multiple points during the year, asked the Department to clarify how to calculate a student's "pace" toward program completion under proposed § 668.34(a)(5)(ii). This commenter also asked whether full time or part time enrollment should be used to calculate pace toward completion under these regulations. Another commenter asked the Department to clarify how pace relates to maximum timeframe under these regulations. This commenter questioned whether a time component of weeks or months to program completion needed to be part of the pace measurement. Another commenter expressed concern that proposed § 668.34(a)(5) is less clear than a strict percentage of completion policy. This commenter, who came up with a 67 percent minimum required completion rate when applying the pace formula and the maximum timeframe requirements to the normal BA graduation requirements, argued that the Department should revise the regulations to list the minimum completion rate that would allow a student to complete his or her program in a 150 percent maximum timeframe (67 percent completion in the commenter's calculation).

This commenter also stated that any institution that had a stricter than minimum SAP policy, such as higher required completion rates, should be allowed to use the financial aid warning status, even if it only checked SAP on an annual basis. The commenter stated that this would allow those institutions with stricter policies and high completion rates to use the flexibility offered through the use of the financial aid warning status.

Discussion: Proposed § 668.34(a)(5)(i), together with the definition of *maximum timeframe* in § 668.34(b), defines "pace" for purposes of SAP evaluations; it is the pace at which a student must progress through his or her educational program to ensure that the student will complete the program within the maximum timeframe and provides for measurement of the student's progress at each SAP evaluation. Proposed § 668.34(a)(5)(ii) provides the formula that an institution must use at each SAP evaluation to calculate pace: divide the cumulative number of hours the student has successfully completed by the cumulative number of hours the student has attempted. This calculation is to be used regardless of the student's enrollment status, as the formula is designed to measure completion appropriately for each student regardless of whether that student attends full time or part time. The Department believes that these requirements for measuring pace toward program completion provide maximum flexibility for both students and institutions. Students are free to attend at whatever enrollment status is appropriate for them, and institutions can measure the pace as appropriate for their students. Because a graduated pace standard (*i.e.,* 50 percent the first year, 60 percent the second year, and 70 percent every year thereafter) is permissible, the Department does not believe it is appropriate to regulate a specific completion rate for all students in all programs at all institutions.

Changes: None.

Transfer Credits

Comment: Several commenters stated that, for purposes of calculating pace toward program completion under § 668.34(a)(5), transfer credits should only count in the completed hours category, but not the attempted hours category, because those credits were not taken at the institution determining SAP. Another commenter stated that transfer credits should only be counted in the attempted hours category but not the completed hours category. One commenter requested clarification as to whether the requirement in § 668.34(a)(6) to count transfer credits as both attempted and completed means that institutions are required to request and evaluate all applicable transcripts.

Discussion: Whether or not an institution evaluates the transcripts of all coursework taken by a student at previous institutions is a decision left to the institution. The Department has not required institutions to request transcripts for previously completed work, and is not doing so now. However, in so much as credits taken at another institution are accepted towards the student's academic program under the institution's academic requirements, we do believe it is appropriate to include those credits in both the attempted and completed hours

category when measuring pace towards completion for each SAP evaluation period.

Changes: None.

Comment: One commenter recommended that the Department revise § 668.34(a) to require transfer credits to be considered when determining progress towards maximum timeframe, but not for purposes of determining the pace of completion for each evaluation period. This commenter stated that counting transfer credits when looking at each evaluation period would give transfer students an unfair advantage in the pace to completion calculation.

Another commenter noted that the practice of excluding courses that were not degree applicable from the pace calculation for evaluating SAP has prompted many students to change majors in order to retain financial aid eligibility. The commenter opined that this practice leaves the door open to abuse of the system. Additionally, the commenter stated that the Department should require that all courses that the student had attempted and completed in his entire career be included in the pace computation for purposes of determining the student's progress toward program completion.

Discussion: The Department acknowledges that transfer students may have a slight advantage over other students when an institution calculates their pace toward program completion. However, this inclusion of transfer credits in the calculation of pace will allow for a more level playing field for all students, and standardize treatment of completed credits in the SAP evaluation. This is because including transfer credits in the calculation of pace means we are considering all completed work for all students.

We also note that the Department has had a longstanding policy that institutions are free to set their own SAP policy that deals with major changes as they relate to measurement of maximum timeframe. Therefore, if an institution wishes to limit the number of major changes that it will allow a student, then it is free to set a policy that does so.

Changes: None.

Financial Aid Probation and Financial Aid Warning Statuses

Comment: Many commenters found the definitions of the terms *financial aid warning* and *financial aid probation* in proposed § 668.34(b) to be helpful. These commenters stated that it was very useful to have standard vocabulary to use when discussing SAP. Some commenters noted that these terms and concepts matched their current policy while others requested slight changes to the terms or definitions so that they align more closely with their own institution's policies. Several commenters sought clarification, however, as to whether institutions are required under these regulations to use the newly defined terms of *financial aid warning* and *financial aid probation* in their consumer information and other communications with students, or whether we would allow them to continue to use their current terminology. These commenters expressed concern that their students might be confused if they changed the terminology used in this area.

Discussion: The Department intends to allow institutions to have as much flexibility as possible in developing an appropriate SAP policy for their institution as well as consumer information materials for their students. However, institutions must incorporate these regulations changes into the information that they provide to students; this includes ensuring that the information made available by the institution uses the terminology used in these regulations.

Changes: None.

Comment: Several commenters expressed support for the addition of the concept of a financial aid warning status, but believed that the use of this status should be available to all institutions, regardless of how often they performed a SAP evaluation. Some of the commenters asserted that this would allow institutions additional flexibility in administering SAP that would be beneficial for students. Some commenters also noted that it would be an administrative burden to review students more frequently. Others indicated that they had stable student populations and did not need to evaluate more often than annually. At least one commenter opined that schools with good graduation and completion rates should be able to use the financial aid warning status regardless of how often they checked SAP. Some commenters argued that the financial aid warning status should be an option for all institutions to use automatically and without intervention, and for periods as long as a year or until the next scheduled evaluation. One commenter suggested that in exchange for allowing all institutions to use the financial aid warning status regardless of how often they evaluate students' academic progress, institutions should be required to remind students of their SAP standards at the end of any payment period in which an evaluation is not done. Some commenters wanted to know if the financial aid warning status could be used to evaluate a student's progress and to help to prepare an academic plan and appeal for the student, so that the student would not suffer a lapse in eligibility.

Discussion: While we appreciate the fact that institutions support the flexibility that the financial aid warning status provides, the Department feels strongly that this option should only be available when an institution evaluates SAP each payment period. It is important to remember that a student who is on a financial aid warning status is one who is not actually meeting SAP standards.

If an institution has a stable student population and does not believe it needs to evaluate SAP each payment period, then it is not required to do so. We recognize that there is an additional administrative burden involved for institutions to evaluate every payment period, but we also believe students benefit from the early intervention of this approach. We believe that this approach will impact favorably on student completion rates, as well as help minimize student debt levels for those that are not on track to complete a program successfully. We note that, during the negotiated rulemaking process, several negotiators had a SAP policy that required checking a student's academic progress each payment period. These negotiators related numerous student success stories that resulted from early intervention. This demonstrated success with this approach led to the negotiators supporting the proposed SAP regulations.

We believe that it is important to get students back on track as soon as possible, and not allow the continued provision of title IV, HEA aid to students who are not making progress towards program completion under the institution's SAP standards. Allowing a financial aid warning status for one payment period allows the institution to provide an alert to that student of his status, as well as provide any needed support services. The institution could use the time to meet with the student and, if the situation means that an appeal will be necessary, to help the student prepare that appeal or to prepare an academic plan. The same benefit is not realized if the student simply receives notice of the institution's SAP policy, as he may not understand his individual status with regards to the policy.

Changes: None.

Comment: Several commenters expressed support for the financial aid warning and financial aid probation

statuses proposed in § 668.34, but requested that the Department add to the SAP regulations a defined term for a student who has lost eligibility for title IV, HEA aid as a result of an institution's evaluation under the SAP regulations. Several other commenters questioned what status would be assigned to a student who was reinstated on an academic plan and was making progress under that plan. These commenters wondered whether these individuals would still be considered to be on financial aid probation status, or if the Department planned to define another term to refer to them.

Discussion: A student who is not meeting SAP is simply not eligible to receive title IV, HEA aid, as he or she does not meet one of the basic student eligibility criteria. For this reason, we do not believe it is necessary to define another term to describe this individual, just as we do not have specific terms to describe students who may not be meeting other basic student eligibility criteria.

A student who has been reinstated to eligibility under an academic plan and is making progress under that plan is considered to be an eligible student. The student is not considered to be on financial aid warning status or financial probation status, provided he or she is otherwise making satisfactory progress.

Changes: None.

Comment: A few commenters argued that proposed § 668.34(c) could be interpreted to allow an institution to place a student on financial aid warning status for more than one payment period, and that, under this interpretation, the student would be able to get title IV, HEA aid for multiple payment periods when the student is on financial aid warning status as long as the student was within range of moving into compliance with the institution's SAP standards. These commenters stated that the language in § 668.34(c) does not need to be interpreted so narrowly so as to limit the number of payment periods during which a student could be placed on financial aid status to one payment period.

Other commenters suggested that students could develop and follow an academic plan during the period of their financial aid warning and that this approach would allow for students to be put on financial aid warning status for multiple periods. These commenters all opined that there was a range of deficiencies within any category of student failure, and that students may require differing amounts of intervention to get back on track to meet the institution's SAP standards. The commenters stated that institutions should be able to define different bands of need for assigning financial aid warning statuses. Several other commenters requested that the Department clarify that students may be placed on financial aid warning or financial aid status for multiple payment periods throughout their academic careers.

Other commenters asked the Department to clarify whether the requirements around financial aid warning or financial aid probationary statuses allow students to receive title IV, HEA aid for more than one payment period. One commenter indicated that lack of financial aid during a period in which the student is on financial aid probationary status would cause problems for students. The commenter stated that this would cause barriers for the most needy and at-risk students.

Discussion: The financial aid warning status and the financial aid probationary status are both defined in § 668.34(b). A student who has not made satisfactory academic progress and is placed under one of these statuses may continue to receive title, IV HEA aid for one payment period only, under very specific circumstances. We do not intend for the language in § 668.34(b) to be interpreted in any other fashion. To respond to the commenter who believed that lack of financial support during this period would disadvantage students, it is important to note that both of these statuses provide for one payment period of title IV, HEA funds. It is possible for institutions that are able to use the financial aid warning status to do any sort of intervention with a student that they deem appropriate during the period of time the student is in that status, including help them to prepare an appeal or refer them to other student support services. We do not believe that it is appropriate, however, to continue placing students on a financial aid warning status for more than one payment period because these are students who are not making progress toward program completion. We do not believe it is appropriate to put the student on an academic plan and simply continue such a plan without an appropriate appeal. This is because we believe that a student should be required to file an appeal and explain the reason that he or she has not been able to meet the SAP standards, and what in his or her situation has changed. It is important for the student to have ownership in his or her current situation and the resulting academic plan, with an understanding of the consequences the student faces if he or she fails to follow the academic plan. We do agree with the commenters who suggest that it is possible for a student to be subject to more than one period of financial aid warning, or to submit more than one appeal throughout an academic career, if the institution's SAP policy allows it.

Changes: None.

Comment: Numerous commenters objected to the requirement in the proposed regulations for institutions to check SAP on a payment period-by-payment period basis. They argued that it is unreasonable for the Department to impose such a requirement on institutions that do not have any history of abuse in this area and that otherwise have good SAP policies. These commenters noted that it would be overly burdensome to require institutions to change their SAP procedures to require SAP evaluations every payment period.

Discussion: Section 668.34(a)(3) is consistent with current § 668.16(e)(2)(ii)(B), which requires institutions to check academic progress for programs that are longer than an academic year at least annually. While institutions can check academic progress for these programs more frequently, they are not required to do so. Under these regulations, institutions are only required to evaluate satisfactory academic progress more frequently if the program is shorter than an academic year.

Changes: None.

Comment: A couple of commenters asked the Department to confirm that the financial aid warning and financial aid probation status would be applied to the student's next payment period (following the institution's determination that the student is not maintaining SAP) and not simply to the next payment period at the institution. These commenters argued that it was important to apply the status to the student during the next term that the student was actually in attendance.

One commenter believed that a program of an academic year in length or shorter should not be allowed to use the financial aid warning status because a student in such a program would never be denied title IV, HEA funds for not making SAP.

Discussion: Under these regulations, an institution would apply the financial aid warning or financial aid probation status to a student during the student's next period of attendance. It is not reasonable to assume that the student would be considered to be on financial aid warning, for example, if he or she were not in attendance. For shorter programs (*i.e.,* those that are an academic year or less), the definition of a payment period does not allow

disbursement of aid until the student has successfully completed the previous payment period. For such programs, if an institution places the student on financial aid warning, the student will either complete the program or withdraw. If the student completes the program, then he or she has been successful. If he or she withdraws, then the return of funds requirements in § 668.22 will apply. In either case, the student received only those funds for which he or she was eligible. We do not plan to make any changes in this area.

Changes: None.

Appeals

Comment: Many commenters agreed with allowing students who would otherwise lose eligibility for title IV, HEA aid to appeal the loss of eligibility. Some commenters expressed concern that the requirements for an appeal were too prescriptive; for example, the commenters noted that § 668.34(b) requires that students articulate what had changed in their situation and that students might not be able to comply with this requirement. Other commenters stated that the Department should make the SAP appeal regulations more prescriptive, including by specifying the type of documentation required to be submitted with an appeal. Several commenters believed that it was too burdensome on institutions to require them to address student appeals, while others stated that it was too burdensome to require institutions to develop or evaluate academic plans for students who appeal.

Discussion: These SAP regulations do not require that an institution accept or evaluate student appeals of determinations that the student is not making SAP. Moreover, the regulations do not require institutions to develop or process an academic plan for a student who appeals. These are merely offered as options for institutions who wish to allow those students who are no longer meeting the SAP standards to continue to receive title IV, HEA aid. It is important to note that an academic plan for a student may be as complicated as a course by course plan toward degree completion, or as simple as a mathematical calculation that specifies the percentage of coursework that the student must now complete. Academic plans need not be complicated or detailed; the purpose of these plans is merely to put the student on track to successful program completion. Section 668.34(a)(10) does require that an institution that does not accept appeals notify students as to how eligibility for title IV, HEA aid can be regained by those who do not meet SAP standards. An institution is free to craft a SAP policy that allows appeals or not, and to specify when and how such appeals will be permitted as well as how often and how many times a student may appeal. Likewise, an institution may or may not allow an academic plan to be submitted for a student. The SAP policy of the institution should specify the conditions under which an academic plan might be approved, or if one will be considered at all. Because institutions have significant flexibility in this area, the Department does not believe that these regulations will impose any additional burden.

Changes: None.

Comment: Some commenters requested clarification as to when students on an academic plan would be evaluated. Several commenters requested that we clarify that a student may submit more than one appeal during the course of his or her academic career. A couple of commenters inquired whether students could appeal the 150 percent completion requirement, and exceed this maximum timeframe if they are progressing under an approved academic plan.

One commenter also asked the Department to clarify what is meant by the requirement in § 668.34(c)(3)(iii)(B) and (d)(2)(iii)(B) that an academic plan ensure that the student meet the SAP standards at a specific point in time. The commenter noted that the student could actually be able to graduate the following term, and questioned whether an appeal could be approved at that point.

Discussion: Under these regulations, the institution has the flexibility to specify whether students on an academic plan would have their academic progress evaluated at the same time as other students, or whether they would be subject to more frequent SAP evaluations. They should determine what is best for students and make their policy clear in their SAP standards.

As noted earlier in this preamble, an institution also retains flexibility under these SAP regulations to allow multiple appeals by an individual student. Alternatively, an institution could decide not to allow appeals at all. We note, however, that because pace to program completion within 150 percent of the published length of the educational program is required to be evaluated each SAP evaluation period, it would be reasonable to assume that a student who is not meeting the institution's SAP standards is not on schedule to complete the program within the required maximum timeframe. Therefore, this component of the SAP standards would be subject to appeal, if the institution chooses to permit appeals. Finally, we expect institutions to assist a student who appeals on this basis to plot a course to successful completion within a new maximum timeframe and to then monitor this pace toward completion. Any academic plan would need to take into account the student's progression to completion of his or her program, which could, in fact, be the next term.

Changes: None.

Maximum Timeframe

Comment: Several commenters stated that the Department should clarify the 150 percent maximum timeframe requirement. One of the commenters noted that § 668.34(b) did not define maximum timeframe, as applied to programs that are a combination of credit and clock hours or a combination of undergraduate and graduate work. One of the commenters argued that the final regulations should reinforce the 150 percent maximum timeframe requirement for all programs. Another commenter stated that we should clarify that the 150 percent maximum timeframe only applies to determining title IV, HEA eligibility. This commenter suggested that this maximum timeframe should not be used for other purposes. For example, the commenter stated that it was not appropriate for the Government to determine whether or not a student should be allowed to complete a degree simply because title IV, HEA eligibility had run out. Another commenter asked whether the 150 percent maximum timeframe applied to the student's entire academic career or only to the student's current academic program. The commenter gave the example of a student who had one degree, and asked if an institution would include those earned credits when evaluating whether the student was progressing in his or her program within the maximum timeframe.

Discussion: The Department believes in allowing institutions the flexibility to define the 150 percent maximum timeframe in the most appropriate way for the program in question. In particular, individual institutions are in the best position to determine whether their combined programs, such as those noted by the commenters, should be evaluated as the sum of its parts (*i.e.,* part clock hour and part credit for example) or as one type of program based on the structure of the majority of the program.

The 150 percent maximum timeframe only applies to the student's eligibility to receive title IV, HEA aid. The Department has never regulated whether or not a student is able to continue on

to degree completion under an institution's academic criteria. The Department also wishes to clarify that the 150 percent maximum timeframe applies only to the student's current program of study. Under these regulations, institutions retain flexibility to define their programs of study in their SAP policy, as well as how they will determine how previously taken coursework applies to the student's current program of study.

Changes: None.

Notification

Comment: Several commenters requested clarification of the notification requirement in § 668.34(a)(11). Specifically, these commenters questioned whether this provision would require institutions to notify all students or only those who were not making SAP.

Discussion: Proposed § 668.34(a)(11) only requires institutions to notify students of the results of their SAP evaluation if the results affect the student's eligibility to receive title IV, HEA aid. Institutions are not required to notify students who are making SAP of the results of the evaluation.

Changes: None.

Evaluating the Validity of High School Diplomas (§ 668.16(p))

High School Diploma (§ 668.16(p))

The Department received over 100 submissions about the new high school diploma regulation. Most of these supported our proposed changes, either with little or no qualification, or with suggested modifications and concerns. Others offered suggestions and concerns without explicitly supporting the proposed regulation.

We noted in the preamble to the NPRM that the Department intends to add questions on the Free Application for Federal Student Aid (FAFSA) asking for the name of the high school the student graduated from and the State where the school is located. The 2011–2012 FAFSA will have one question with three fields. Students who indicate that they will have a high school diploma when they begin college for the 2011–2012 year are instructed to provide the name of the high school where they received or will receive that diploma and the city and state where the school is located. In the online application, FAFSA on the Web, students will not be allowed to skip this question, though for 2011–2012 it will only be presented to first-time undergraduate students. There will be a drop-down list of both public and private high schools, populated by the National Center for Education Statistics (NCES), within the Department of Education, from which most students will be able to select the high school that awarded them a diploma. Students who cannot find their school and those who complete a paper FAFSA will write in the name, city, and State of their high school. It is important to note that the absence of a high school on the drop-down list does not mean that the high school the student indicated he or she graduated from is not legitimate. It just means that the school was not included in the NCES list. Similarly, the inclusion of a high school on the drop-down list does not necessarily mean that the high school is legitimate.

In addition to the information in the following discussions, we will provide more guidance on implementing § 668.16(p), as necessary, in Dear Colleague Letters, electronic announcements, and the Federal Student Aid Handbook.

Comment: Several commenters observed that many institutions already perform some kind of high school evaluation as part of their admission process, and one noted that because of this, it is appropriate for the Department to establish regulations requiring the validation of high school diplomas. One commenter appreciated that proposed § 668.16(p) would help institutions when they are challenged by students or high school diploma mills for looking into the validity of high school diplomas. Another commenter noted that a list of "good" high schools would be valuable for students in deciding whether they would want to obtain a diploma from a given source. Another commenter opined that the identification of suspect schools benefits students.

Discussion: We appreciate the support of these commenters. The list of schools that will appear on FAFSA on the Web is meant only as an aid for students in completing the FAFSA. It is not a list of "good" schools, and it may happen that an institution will need to evaluate the diploma from one of these schools. Also, a school that does not appear on the list should not be inferred to be "bad." The intent of new § 668.16(p) is to have institutions develop a process for evaluating the legitimacy of a student's claim to have completed high school and not to have simply purchased a document that purports they completed a high school curriculum. Under this provision, institutions must develop and follow procedures to evaluate the validity of a student's high school completion if the institution or the Secretary has reason to suspect the legitimacy of the diploma.

Changes: None.

Comment: Many commenters requested that the Department provide institutions with clear guidance on how to review the validity of high school diplomas and that it provide this guidance as soon as possible. Although, as noted previously, many institutions review high school credentials, one large college noted that there are no common practices for these types of reviews and asked that the Department delay the effective date of this regulatory requirement if it is unable to release the needed guidance far enough in advance of July 1, 2011. This commenter stated that such a delay would be needed for schools to have enough time to create their procedures and train their employees on following the procedures. One commenter asked what the effect of this requirement would be on the student's eligibility for title IV, HEA program assistance when an institution is unable to determine whether a given diploma is valid.

Discussion: There is no plan to delay the implementation of § 668.16(p). As noted earlier in this discussion, more guidance will be forthcoming about evaluating the validity of high school diplomas, and many institutions have been evaluating the validity of high school diplomas for years. We encourage financial aid administrators (FAAs) to consult with each other in this matter, which can be especially useful for similar types of institutions in the same State, where differing levels of oversight by State departments of education will have a significant effect on what procedures an institution might establish.

With respect to the comment asking about student eligibility for title IV, HEA program assistance when an institution is unable to determine whether the student's diploma is valid, we note that there are alternatives for the student to establish aid eligibility under § 668.32(e), such as passing an ATB test, or completing six credits of college coursework that apply to a program at the current school.

Changes: None.

Comment: Various commenters either requested that we create a list of fraudulent or "bad" high schools or asked if we planned to do so. Many commenters asked that we make available both a list of "bad" high schools and a list of acceptable schools and that we update them frequently, some suggesting at least quarterly. Some commenters requested that the effective date for this regulatory provision be delayed until at least 2012–2013 so the Department can have a complete list of acceptable schools and can address

issues such as foreign postsecondary schools, defunct schools, and missing records.

Finally, some commenters asked what we would consider acceptable documentation when a high school does not appear in the Department's database of acceptable high schools.

Discussion: As noted earlier in this preamble, we are not delaying the effective date of § 668.16(p). We believe it is an important new provision that can be implemented for the 2011–2012 year on the basis we describe in this preamble.

To emphasize a point earlier in this preamble, a school's inclusion on the list on FAFSA on the Web does not mean that it is exempt from possible review by an institution. Acceptable documentation for a review can include a high school diploma and a final transcript that shows all the courses the student completed.

Changes: None.

Comment: One commenter requested that the high school diploma validation required under § 668.16(p) apply only to undergraduates. Others asked for institutions to be able to waive diploma validation for students who are substantially older than traditional college age and for students whose high school no longer exists or cannot be readily identified.

Discussion: For 2011–2012, the Department will only ask first-year undergraduate students to provide on FAFSA on the Web information about the high school they graduated from. However, § 668.16(p) requires institutions to review any high school diploma if the institution or the Secretary has reason to believe the diploma is not valid. In those instances the institution must evaluate the validity of the student's high school completion whether the diploma was obtained by an undergraduate or other student and regardless of whether the student's high school no longer exists or is not easily identified. We do not believe it is appropriate to limit this requirement to only undergraduate students or those whose high schools are not easily identified because the student eligibility requirement to have a high school diploma or its recognized equivalent or to meet an alternative standard applies to all students.

Changes: None.

Comment: Several commenters expressed concern about the difficulty of validating high schools, not only for older students, but also for students who graduated from a high school in a different part of the country, or in another country. One commenter suggested that the Department permit institutions to use copies of foreign secondary school credentials, attestations, and proof of entry into the United States after the age of compulsory attendance, when evaluating the secondary school education of foreign-born students. Another commenter stated that many admissions offices use the "credential score" for foreign countries instead of the name of the school, and that the Department should give guidance on how institutions can use that score to evaluate diplomas from foreign schools. A couple of commenters expressed concern that under proposed § 668.16(p) students who went to foreign schools would be adversely affected and possibly denied access to postsecondary education.

Discussion: An institution may consider various kinds of documentation when developing its procedures for evaluating the validity of a student's high school diploma. For example, there are companies that provide services for determining the validity of foreign secondary school diplomas; documentation from such companies can inform an institution's diploma evaluation.

Changes: None.

Comment: A couple of commenters asked if there will be an appeal process for students if an institution determines that their high school diploma is invalid. Others observed that different institutions may decide differently about a given high school's diploma and asked whether the Department will be the final arbiter in these situations.

Discussion: The regulations do not provide for an appeal process for students if an institution determines their high school diploma is invalid. The Department considers institutions to be our agents in administering the title IV, HEA programs and to have final authority in many decisions. Consequently, we do not generally have appeal processes in place for institutional determinations of student eligibility. Moreover, the Department will not intervene in cases where a high school diploma is deemed valid at one institution but not another.

Changes: None.

Comment: Several commenters asked what the effect of proposed § 668.16(p) would be on homeschooling, and some commenters noted that a home school credential is different from a high school diploma and asked that the Department emphasize this difference. Others asked that we provide guidance on State-granted credentials for homeschoolers and best practices for verifying home school credentials. One organization asked that the achievements of homeschoolers not be ignored, and that the proposed regulations and any related FAFSA changes recognize that graduates of home schools receive a diploma from their program.

Finally, one commenter questioned why the Department is so interested in the quality of a high school diploma (which is not defined in the HEA or the Department's regulations) when homeschooled students are taught by their parents, who (typically) lack credentials and curriculum standards.

Discussion: Section 668.16(p) does not apply to homeschooled students. For guidance pertaining to homeschooled students, please see Chapter 1 of Volume 1 of the Federal Student Aid Handbook.

Changes: None.

Comment: Many commenters asked if there would be, or suggested that there should be, a mechanism for schools and State and local agencies, accrediting bodies, and education departments to suggest schools that should be added to any acceptable and unacceptable lists that the Department develops in connection with § 668.16(p). One commenter requested that when we ask States to provide lists of approved schools, they provide all high schools and not just public high schools, which the commenter noted fall under more State oversight. Another commenter recommended referring to the College Entrance Examination Board (CEEB) code for high schools to determine whether those are acceptable, and another suggested consulting the College Board and the Department of Defense to help build the list of acceptable high schools. A few commenters asked what will happen when an institution evaluates a diploma from a school not on the Department's list of acceptable high schools and finds that the school is acceptable. The commenter wondered if this will mean that institutions will have their own lists of acceptable schools separate from the Department's.

Discussion: As noted earlier in this preamble, we intend to use information from NCES to create a drop-down list in FAFSA on the Web populated by the names of public and private high schools that NCES provides to us. Neither inclusion on the list nor exclusion from it is an indication of whether a high school will need to be reviewed by a postsecondary institution under § 668.16(p).

There is a procedure by which private schools may submit their name for inclusion on the private school list. Postsecondary institutions are not

responsible for submitting the names of secondary schools.

Changes: None.

Comment: A couple of commenters distinguished between a high school diploma and a transcript, and suggested that a transcript is more valuable for institutions to use to determine the validity of the student's high school completion. Another commenter noted that transcripts and diplomas are not interchangeable and that the Department should clarify this.

Discussion: We agree that a high school transcript is not the same as a diploma. It is the latter that is required under the student eligibility regulations and the statute, not the former. A transcript may be a valuable tool in determining whether a high school diploma is valid because by listing the courses the student completed, it demonstrates the extent of his or her secondary school education.

Changes: None.

Comment: One commenter seemed to think that an institution would submit documentation to the Department for review if a student was chosen for verification due to not answering the FAFSA questions about his or her high school diploma.

Discussion: The Department does not plan to require institutions to submit individuals' high school documentation for validation. Moreover, the Department does not intend to select applicants for verification just because they did not complete the high school diploma questions on the FAFSA.

Changes: None.

Comment: A few commenters suggested that institutions should not be considered to have reason to believe that an applicant's high school diploma is not valid or was not obtained from an entity that provides secondary school education, unless the information from FAFSA processing suggests that. These commenters argued that institutions should not be obligated to investigate whether every applicant's high school diploma is valid, nor should the institution be required, if it is an institution that collects diploma information as part of the admissions process, to cross-check that information against the information from the FAFSA because that would be too burdensome.

Discussion: For the 2011–2012 award year, we will not provide any additional high school diploma information on the Institutional Student Information Record (ISIR) beyond what the student submitted on the FAFSA. We will not expect institutions to check the ISIR high school data for every student against other information obtained by the institution during the admissions process. However, if an institution has reason to believe (or the Secretary indicates) that a high school diploma is not valid, the institution must follow its procedures to evaluate the validity of the diploma.

Changes: None.

Comment: One commenter requested that the Department declare that § 668.16(p) will not be retroactive.

Discussion: This requirement will apply to institutions beginning on July 1, 2011, the effective date for these regulations. This means that institutions will be required to follow the procedures developed under § 668.16(p) for any applicant who completes a FAFSA beginning with the 2011–2012 award year.

Changes: None.

Comment: Several commenters requested that we allow FAAs to forego diploma validation for students who have completed six credits of college coursework that applies to a program of study at the institution or if the student's ability to be admitted to the institution or eligibility for title IV, HEA aid is otherwise not affected.

Discussion: It is correct that a student without a high school diploma would be eligible for title IV, HEA aid if he or she meets one of the other academic criteria, such as successfully completing six credits or 225 clock hours of college-level coursework that apply to a program at the current institution. However, because students have that flexibility does not obviate the requirement that for an institution to be eligible, it must admit as regular students only those with a high school diploma, or the recognized equivalent, or who are beyond the age of compulsory school attendance.

Changes: None.

Comment: One commenter asked that if the Department permits waivers to the requirement in § 668.16(p) to follow procedures to check the validity of a high school diploma, that institutions, in particular those that do not admit students without a diploma or the equivalent, be permitted to evaluate the validity of a diploma if they choose.

Discussion: There will be no waivers of the requirement that an institution must evaluate the validity of a high school diploma when it or the Secretary has reason to believe that the diploma is not valid or was not obtained from a school that provides secondary school education.

Changes: None.

Comment: One commenter asked that we interpret section 123 of the HEA (20 U.S.C. 1011l) to apply to high school diploma mills as well as college diploma mills.

Discussion: This section of the HEA provides that the Department will, among other things, maintain information on its Web site to educate students, families, and employers about diploma mills and that it will collaborate with other Federal agencies to broadly disseminate to the public information on how to identify diploma mills. While section 105 of the HEA (20 U.S.C. 1003) defines diploma mill only in terms of postsecondary education, we intend to examine the issue of high school diploma mills further.

Changes: None.

Comment: One commenter urged the Department's Office of Inspector General to be actively engaged with other agencies in detecting fraud, especially given that high school diploma mills may adopt names of legitimate schools.

Discussion: The Department's Office of Inspector General will continue to work with other agencies as appropriate to detect fraud in this area.

Changes: None.

Comment: One institution commented that it finds it difficult to explain to students who present questionable high school credentials why those credentials are not sufficient for receiving title IV, HEA aid.

Discussion: In a situation such as this, we believe that it would be appropriate for the institution to explain to students the concept of a high school diploma mill, *i.e.,* an entity that offers a credential, typically for a fee, and requires little or no academic work on the part of the purchaser of the credential. We believe that students with a credential from a diploma mill would not have a sufficient educational foundation for success at the postsecondary level and should not receive title IV, HEA aid.

Changes: None.

Comment: One commenter urged the Department to clarify that the diplomas of high schools that are not accredited are not necessarily invalid under § 668.16(p). Several commenters asked whether a new high school that was operating but had not yet received accreditation would be acceptable under this regulation. A small private high school expressed concern that the new provision would hinder its students from going to college because it is not accredited and this provision may be misinterpreted to mean that non-accredited high schools are not acceptable. The school asked that we disabuse the public of the mistaken notion that for students to receive title IV, HEA aid, their high school diplomas must be from accredited schools.

Discussion: Diplomas issued by high schools that are not accredited (more common among private than public high schools) often meet college admissions standards and are generally acceptable for receiving title IV, HEA aid. We have noted for several years in the Federal Student Aid Handbook that high schools do not need to be accredited for their diplomas to be acceptable for title IV, HEA eligibility. The Department's recognition of accreditation exists only at the postsecondary level.

Changes: None.

Comment: One organization representing colleges suggested that we should not remove a high school from any list we create if that school closes.

Discussion: We do not plan to remove closed schools from a list.

Changes: None.

Comment: One commenter expressed concern that because many for-profit colleges do not require proof of a high school diploma (many require only that the applicant provide a signed statement of high school completion), they will not be diligent when evaluating the validity of their applicants' high school diplomas.

Discussion: Whether any institution fails to appropriately investigate the validity of a student's high school completion will be determined in program reviews, audits, and other Department oversight processes.

Changes: None.

Comment: One commenter claimed that institutions are not qualified to determine the quality of anyone's high school diploma, education, or secondary learning.

Discussion: We disagree with this commenter. Section 668.16(p) only requires that institutions develop and follow procedures to determine the validity of a student's high school completion when they or the Secretary have reason to believe that the high school diploma is not valid or was not obtained from an entity that provides secondary school education. We do not believe that an institution will need any unique qualifications to make this determination; as noted earlier, many institutions already evaluate the high school completion of students during the admissions process.

Changes: None.

Comment: One commenter opined that using a list of unacceptable schools is a less effective method of dealing with high school validation, and that the best method would be to have a large database of all high school graduation records.

Discussion: While we appreciate the commenter's suggestion, we do not believe that the creation or use of a single database of all graduation records from the entire country is feasible.

Changes: None.

Comment: One commenter stated that some institutions do not have the resources to evaluate the validity of high school diplomas and that the Department should make those determinations with the help of appropriate State agencies.

Discussion: We believe that administrators at institutions, who have direct contact with applicants, are in the best position to evaluate the validity of high school completions. We will issue further guidance on how to make those evaluations efficient and will try to minimize the administrative burden on institutions.

Changes: None.

Comment: One commenter claimed that the Department wants to keep the list of acceptable high schools secret to avoid having to defend its inclusion of the schools on the FAFSA list.

Discussion: As noted earlier in this preamble, FAFSA on the Web will include a list of schools to help students fill out the application; it will not be a list of acceptable schools. It will be available to the public via FAFSA on the Web, though whether it can be accessed without filling out the application and whether it will be available as a separate document, such as the Federal School Code List, are not yet decided.

Changes: None.

Comment: Several commenters expressed concern that complying with § 668.16(p) would place a disproportionate burden on institutions and students, and that community colleges in particular would be burdened because of their larger numbers of immigrant and non-traditional students. These commenters noted that the FAFSA will get larger by two questions. One commenter noted that the added questions are acceptable even with the Department's attempt to simplify the FAFSA, while another opined that requiring a high school diploma does not seem to be a significant hurdle.

Discussion: The Department will be mindful of ways in which to limit the additional burden § 668.16(p) will impose. However, because one of the statutorily defined eligibility criteria for receiving title IV, HEA aid is that a student completed high school, we do not consider it an unacceptable burden on students to report on their FAFSA the name, city, and State of the high school that awarded them their diploma. Also, there are enough alternatives to having a high school diploma that make satisfying the academic criterion for student eligibility reasonable. Finally, we consider the inclusion on the FAFSA of three additional, easy-to-answer fields a reasonable increase in the size of the FAFSA.

Changes: None.

Comment: One commenter noted that the new questions on the FAFSA will not solve the problem of identifying questionable diplomas because the questions will only determine if a high school is on the approved list.

Discussion: We agree that the Department's list of schools will not solve the problem. Section 668.16(p), however, requires institutions to develop and follow procedures to determine the validity of a student's high school completion when they or the Secretary has reason to believe that the high school diploma is not valid or was not obtained from an entity that provides secondary school education. Accordingly, we believe that the new FAFSA question and the requirements in § 668.16(p) will go a long way to identifying those schools that are providing invalid diplomas.

Changes: None.

Comment: One commenter expressed the opinion that institutions should be responsible for verifying high school diplomas or General Education Development (GED) certificates with a copy of either document, or with a transcript. The commenter argued that if students cannot provide this documentation to the institution, they should be required to take an ability-to-benefit (ATB) test. Other commenters stated that all institutions should be required to verify that every title IV, HEA aid recipient has a high school diploma or GED.

Discussion: We do not plan to require that all institutions ask, in every instance, for a copy of a student's diploma or transcript. Moreover, ATB tests are not the only alternative to a high school diploma or GED certificate for establishing title IV, HEA eligibility; for example, as noted earlier in this preamble, students who complete six credit hours or 225 clock hours of college coursework that apply to a program at the current institution and are beyond the age of compulsory school attendance do not need to have a high school diploma. Therefore, we decline to make any changes to the regulations in response to these comments.

Changes: None.

Comment: One commenter argued that verifying authenticity of high school diplomas is a waste of resources because even students who have

completed high school and obtained a valid high school diploma might still not be ready for college. The commenter stated that the Department should focus instead on improving secondary school education and not connect title IV, HEA eligibility to the high school credential until the work of improving high schools has been completed.

Discussion: Improving high school education is an important objective of the Secretary; however, the Department does not consider it necessary to refrain from requiring institutions to develop and follow procedures for evaluating the validity of high school diplomas until the task of improving high school education nationwide has been completed. And we believe verifying the validity of high school diplomas is necessary to ensuring compliance with the eligibility requirements for the receipt of title IV, HEA aid.

Changes: None.

Comment: One commenter suggested that because § 668.16(p) does not require documentation of a diploma or graduation from an applicant's high school directly, the fraud surrounding this issue will just switch to the use of fraudulent diplomas or transcripts purportedly from legitimate high schools. Also, this commenter pointed out that it will be easy for unscrupulous college employees to skirt this requirement by telling students to simply list the name of a legitimate school or where to get a forged diploma, just as recruiters now tell students where they can buy a high school diploma.

Discussion: Institutions are free to request that documentation come directly from the high school. We also acknowledge that it will be impossible to eliminate all potential fraud, yet we believe that the extra step of requiring validation under § 668.16(p) will help to eliminate some of it. As we noted in the preamble to the NPRM, the Department has other avenues for addressing fraudulent activities committed at an institution.

Changes: None.

Comment: One commenter noted that when an institution is evaluating the validity of a student's high school education and his or her diploma or transcript is not available, it should be able to accept a certified statement from the student that serves as documentation of graduation and explains why the student could not obtain a copy of the diploma.

Discussion: A certified statement from a student is not sufficient documentation of this requirement. It should be rare that students cannot provide a copy of either their high school diploma or final transcript, and there might be such instances where an institution can still validate a student's high school education without a copy of the diploma or transcript. But FAAs should remember that there are established alternatives for a high school diploma, such as the GED certificate or ATB test.

Changes: None.

Comment: One commenter suggested that the Department should determine if a significant number of students indicated they had valid diplomas, when they, in fact, did not. The commenter recommended that the Department make § 668.16(p) voluntary or require compliance through a pilot program because building and maintaining an accurate database will be difficult and students will make mistakes that could delay their eligibility for a semester, a year, or a whole degree program.

Discussion: We do not plan to make compliance with § 668.16(p) voluntary or part of a pilot program. We expect that delays resulting from evaluation of high school diplomas will be minimal or nonexistent.

Changes: None.

Comment: One commenter stated that the new FAFSA questions on high school completion should be required and that students should not be able to enter an invalid school, or leave the questions blank.

Discussion: As noted earlier, we intend to require that students who indicate that they have a high school diploma also give the name of the school that awarded the diploma and the city and State in which the school is located. They will be able to select a school from the Department's list or be prompted to write in the name of the school. Students will be unable to complete the online FAFSA unless they provide this information.

Changes: None.

Comment: Commenters noted that, even if students indicate that their diploma is from an acceptable school, it does not prove the student actually graduated from that school. These commenters argued that proposed § 668.16(p) is not an improvement to the current practice, and that the extra step required under the new regulatory provision will not help for institutions that do not require a diploma for admission.

Discussion: The proposed change reflected in § 668.16(p) is designed to reduce the number of students who indicate that they have a high school diploma, but who do not, or who only possess a credential from a "diploma mill." We believe that many students with such credentials will indicate the name of the entity they received it from, either because they honestly believe they have a legitimate high school diploma or because they will be reluctant to provide the name of a school they did not graduate from because the financial aid office will easily be able to determine that such a statement is false. All institutions, including those that do not require a high school diploma for admission, will be subject to the requirements in § 668.16(p) and, therefore, will need to evaluate the credentials supplied by students as proof of high school completion if they or the Department has reason to believe the credential is not valid. We believe that this required process will reduce the number of bad credentials.

Changes: None.

Comment: One commenter suggested that unless the Department clarifies what is a valid high school diploma, it should not, as part of a program review, substitute its judgment for an institution's determination. The commenter argued that if an institution acted reasonably, the eligibility of a student should not be questioned, even if the Department, or another school, reaches a different conclusion about the high school the student attended. Another commenter asked that the Department make clear in this preamble that institutions may change their determinations about a given high school. New information may move a school from the "good" list to the "bad" one, or vice versa. The commenter wanted to ensure that the Department does not dissuade institutions from making such adjustments by deeming that a later determination indicates an earlier one was inappropriate.

Discussion: We do not plan to second-guess the decisions of college administrators in these matters, such as moving a high school from a "good" list to a "bad" list (or vice versa), as long as they are reasonable.

Changes: None.

Comment: One commenter stated that it was not fair to require students to provide a high school diploma because, in the commenter's experience, homeschooled students have only a transcript as proof of completing a secondary school education.

Discussion: As we noted earlier in this preamble, the procedure for determining the validity of homeschooled students' education is not affected by § 668.16(p).

Changes: None.

Comment: One commenter observed that students in high school special education programs might receive a certificate or award that is not a high

school diploma when they did not complete the required coursework to receive an actual diploma from the school and that these students may incorrectly believe that the certificate or award is a diploma.

Discussion: Students who do not complete the required coursework to receive a high school diploma from their secondary school by definition did not earn a high school diploma. These students are not eligible for title IV, HEA aid unless they meet the academic requirement under one of the alternatives to a high school diploma in § 668.32(e), or they are students with intellectual disabilities who are seeking Pell, FSEOG, or FWS program assistance under § 668.233.

Changes: None.

Comment: One commenter asked us to clarify what would cause an institution to have "reason to believe that the high school diploma is not valid or was not obtained from an entity that provides secondary school education."

Discussion: We expect that there may be a number of situations in which an institution will have reason to believe that an applicant's high school diploma is not valid or was not obtained from an entity that provides secondary school education. For example, institutions may come across information that suggests that the applicant's diploma or transcript was purchased with little work expected of the student. Often FAAs receive conflicting information from students themselves, typically as remarks that cast doubt on some element of the students' application information. We expect the same regarding valid high school diplomas. Moreover, institutions may have reason to believe that a high school diploma is invalid if they recognize the name of the high school as an entity that they identified in the past as being a high school diploma mill.

Changes: None.

Comment: One commenter requested that we add a check box on the FAFSA for applicants who completed secondary school in a foreign country and an empty space for them to fill in the name of their secondary school. The commenter suggested that in this situation, the student's FAFSA would receive a "C" code, not automatically, but at random, so that due diligence would still be required by the institution.

Discussion: When completing the FAFSA, applicants will be able to enter the name of their high school if it is not on the Department's drop-down list.

Changes: None.

Comment: One commenter expressed concern that the wording of the second new question proposed for the FAFSA, as noted in the preamble to the NPRM, could be misleading and suggested that the Department use either of the following questions instead:

- In what State is the school listed in question #1 located? or
- In what State was the school in which the student completed high school located?

Discussion: As we noted earlier in this preamble, the 2011–2012 FAFSA asks for applicants to indicate the name of the high school where they received or will receive their diploma and the city and State where the school is located.

Changes: None.

Return of Title IV, HEA Program Funds (§§ 668.22(a), 668.22(b), 668.22(f), and 668.22(l))

Treatment of Title IV, HEA Program Funds When a Student Withdraws From Term-Based Programs With Modules or Compressed Courses (§§ 668.22(a), 668.22 (f) and 668.22 (l))

Comment: Approximately 80 commenters, mostly representing institutions, commented on the proposed changes to the treatment of title IV, HEA program funds when a student withdraws from a program offered in modules. Approximately 26 of these commenters opposed the proposed changes, with some commenters recommending that the Department not issue final regulations at this time and instead seek further input from the community.

Many of these commenters believed the proposed changes would be too burdensome to institutions. Several commenters were concerned about the additional administrative and financial burden the proposed changes would impose on institutions by requiring them to identify and process more students as withdrawals. A few commenters believed that, as a result of this burden, the proposed regulations would discourage schools from offering programs in modules, potentially causing disruptive changes in course offerings at institutions. A few commenters believed institutions would be unable to comply with the proposed regulations because they are too complicated or too difficult to explain to students. One commenter believed the proposed regulations would force an institution to delay disbursements to prevent the institution or student from having to return unearned title IV, HEA program funds if the student withdrew.

Many of these commenters also believed that the proposed changes would be harmful to students because some students who withdrew after completing one course in one module would earn less title IV, HEA program funds. In particular, some commenters believed it was unfair to treat as a withdrawal a student who withdrew from a course or courses in the payment period or period of enrollment, but who would attend courses later in the same payment period or period of enrollment, and wanted to know how to handle title IV, HEA program funds in such cases. A few commenters believed the proposed regulations would discourage students from enrolling in programs structured in modules, including compressed courses to accelerate completion of their program, which the commenters believed was in conflict with the provisions for two Federal Pell Grants in one award year, which were implemented to support and make equitable aid available for students who wish to complete their program sooner. A few commenters were concerned that a student who would now be counted as a withdrawal would be burdened with more debt: To the institution for any remaining balance of tuition and fees, and to the Department for Federal loans and or grant overpayments. One commenter noted that treating a student as a withdrawal also has negative consequences for a student under the provisions on satisfactory academic progress and loan repayment.

A few commenters believed the proposed regulations unfairly targeted certain programs or institutions. Some of the commenters believed the proposed changes would treat students in module programs inequitably when compared to students in more traditional programs where courses are offered concurrently. One commenter believed that the proposed regulations would have a disproportionately negative affect for students in career technical programs, as many of those programs are taught in a condensed, modular form. Some commenters believed the proposed regulations unfairly focused on only term-based credit-hour programs.

Approximately 25 of the commenters expressed an understanding of the Department's concern with students receiving full or large amounts of title IV, HEA program funds for a short period of attendance during a payment period or period of enrollment. A couple of those commenters agreed with the proposed changes. Others believed that the current guidance from Dear Colleague Letter of December 2000, GEN–00–24, Return of Title IV Aid-Volume #1—which provided that a student who completed only one module or compressed course within a term was not considered to have

withdrawn—should be incorporated into the regulations. These commenters believed that a student who has earned credits in a payment period or period of enrollment who then ceases attendance should not be treated as a withdrawal, as the existing regulations in 34 CFR 690.80(b)(2)(ii), requiring recalculations of title IV, HEA program funds when a student did not begin attendance in all classes, are a sufficient safeguard against students receiving full or large amounts of title IV, HEA program funds for a short period of attendance in a program offered in modules. Two commenters believed that the satisfactory academic program provisions should be sufficient to prevent long-term abuse by students of title IV, HEA program funds.

Several commenters suggested alternative approaches to ensure that students are not receiving title IV, HEA program funds for periods in which they are not in attendance. A few commenters believed that a student attending a certain percentage of the payment period or period of enrollment (commenters suggested 60 percent) should be deemed to have completed a payment period or period of enrollment. A couple of commenters believed that the determination of whether a student should be treated as a withdrawal should be based on credit hours completed, rather than days completed, meaning that a student who ceased attendance would not be treated as a withdrawal as long as the student completed the minimum number of credits required to be eligible for a particular title IV, HEA program. A few commenters supported setting a minimum length of a module that must be completed, after which a student who ceased attendance would not be considered to have withdrawn. A few commenters suggested requiring institutions to award or pay title IV, HEA program funds by module, or to delay payment until a student has earned enough credits to support the enrollment status necessary for eligibility of the aid. One commenter suggested limiting the amount of title IV, HEA program funds that can be earned by a student to the lesser of actual charges or the amount calculated under the Return of Title IV Funds provisions (*i.e.,* the provisions of § 668.22). A couple of commenters believed an institution should be able to exercise professional judgment or use its own discretion to determine whether a student has truly withdrawn from class. One commenter suggested that, for clock-hour and nonterm programs, a student be considered to have withdrawn if the student had not been in attendance for 35 consecutive days and had not completed the payment period or period of enrollment.

One commenter believed that the proposed changes addressing completion of a payment period or period of enrollment by students in clock-hour programs were incorrect as all determinations of title IV, HEA program funds earned by students who withdraw from clock-hour programs aid are based on scheduled hours, and the changes referred to clock hours completed.

Discussion: We note that these final regulations do not change how institutions are currently required to treat students when they withdraw from programs offered in modules (*i.e.,* sequentially) in nonterm credit-hour programs, and some nonstandard-term credit-hour programs. The Secretary believes that the approach proposed in the NPRM treats students more equitably across all programs by eliminating the major differences in the treatment of students who withdraw from term-based and nonterm-based programs offered in modules and, therefore, is a better approach than basing the determination of completion of a payment period or period of enrollment on completion of one course/module, even if a minimum length of such a course/module were set. In addition, this approach more accurately reflects the statutory requirement in section 484B(a)(1) of the HEA that applies the Return of Title IV Funds requirements to any recipient of title IV, HEA program funds who "withdraws from an institution during a payment period or period of enrollment in which the student began attendance" and the fact that title IV, HEA program funds are awarded for an entire payment period or period of enrollment. Some of the alternatives suggested by the commenters—determining completion based on attendance of a certain percentage of the payment period or period of enrollment; using credit hours completed, instead of days completed; delaying awarding or paying title IV, HEA program funds; equating unearned aid to actual charges; and leaving the determination of completion of the period up to institutional discretion—are not supported by the HEA, which requires in section 484B(a) that students earn title IV, HEA program funds on a pro rata basis up through the 60 percent point of a period based on days completed, for credit-hour programs, and clock hours completed, for clock-hour programs. Completing more than 60 percent of the period then entitles a student to have earned 100 percent of the funds for the period. The law therefore does not permit the alternative measures of when a student may keep 100 percent of the title IV, HEA program funds that were suggested by the commenters.

The Secretary agrees that it is reasonable to allow an institution not to treat as a withdrawal a student who ceases attendance during a payment period or period of enrollment, but intends to attend a course later in the payment period or period of enrollment. This position is consistent with the guidance provided in the Department's Dear Colleague Letter of December 2000, GEN–00–24, Return of Title IV Aid-Volume #1, for the treatment of title IV, HEA program funds when a student withdraws without completing at least one course in a payment period or period of enrollment. These final regulations have been modified to incorporate this policy and provide that a student is not considered to have withdrawn if the student ceased attending the modules he or she was scheduled to attend, but the institution obtains a written confirmation from the student at the time of the withdrawal that he or she will attend a module that begins later in the same payment period or period of enrollment. This will provide more flexibility for a student who provides the authorization. This confirmation must be obtained at the time of withdrawal, even if the student has already registered for subsequent courses. However, these final regulations provide that, for nonterm and nonstandard-term programs, a confirmation is valid only if the module the student plans to attend begins no later than 45 calendar days after the end of the module the student ceased attending. If the institution has not obtained a written confirmation that the student intends to return to a nonterm or nonstandard-term program within 45 calendar days of the end of the module the student ceased attending, the student is considered to have withdrawn. A student who has provided written confirmation of his or her intent to return is permitted to change the date of return to a module that begins even later in the same payment period or period of enrollment, provided that the student does so in writing prior to the return date that he or she had previously confirmed, and, for nonterm and nonstandard-term programs, the later module that he or she will attend begins no later than 45 calendar days after the end of the module the student ceased attending. If an institution obtains a written confirmation of future attendance but the student does not return as scheduled, the student is

considered to have withdrawn from the payment period or period of enrollment and the student's withdrawal date and the total number of calendar days in the payment period or period of enrollment would be the withdrawal date and total number of calendar days that would have applied if the student had not provided written confirmation of future attendance.

Title IV, HEA program funds are awarded to a student with the expectation that the student will complete the period of time for which the aid has been awarded. When a student does not complete enough of his or her education to earn all of the originally awarded title IV, HEA program funds, it is in the best interest of the taxpayer to have the unearned Federal funds returned to the government as expeditiously as possible for use by other students. It is also fairer to all students receiving title IV, HEA program funds to have the way those funds are earned be comparable regardless of the way their programs are structured. In general, the Secretary believes that long gaps in attendance during a payment period or period of enrollment are not in the best interest of students and increase the likelihood that a student will not return to the institution. Should the student not return, the Secretary does not wish to unduly delay the return of title IV, HEA program funds. The Secretary agrees with the suggestion that, for clock-hour and nonterm programs, a student be considered to have withdrawn if the student has not been in attendance for a specified period of time and has not completed the payment period or period of enrollment, although the Secretary believes that 45 days, rather than 35 days, as suggested by the commenter, is an appropriate period of time. Thus, in addition to limiting a student's confirmation of return in a nonterm or nonstandard-term program to a module that begins no later than 45 calendar days after the end of the module the student ceased attending, if a student in a nonterm or nonstandard-term program is not scheduled to begin another course within a payment period or period of enrollment for more than 45 calendar days, the institution must treat the student as a withdrawal for title IV, HEA program fund purposes, unless the student is on an approved leave of absence, as defined in § 668.22(d).

We do not believe that students should be penalized if they do not confirm an intent to return to a module later in the payment period or period of enrollment, but do return to the module anyway, or if they are not scheduled to begin a course within a payment period or period of enrollment in a nonterm or nonstandard-term program for over 45 days, but do return and begin a course within that payment period or period of enrollment. Thus, in these situations, we believe it is appropriate for the institution to "undo" the Return of Title IV Funds calculation and treat those students as if they had not ceased attendance. This final regulation is consistent with current regulations for students who withdraw from clock-hour programs and nonterm credit-hour programs. Under § 668.4(f), a student who returns to a nonterm credit-hour program or clock-hour program (regardless of whether the program is offered in modules) within 180 days after withdrawing is treated as if he or she did not cease attendance (*i.e.,* is considered to remain in that same payment period, and is eligible to receive any title IV, HEA program funds for which he or she was eligible prior to withdrawal, including funds that were returned by the institution or student under the provisions of § 668.22). If a student returns to a clock-hour or nonterm credit-hour programs after 180 days, the student's withdrawal is not "undone"; he or she must begin a new payment period and aid for that period is determined in accordance with the provisions of § 668.4(g). The Secretary believes that similar treatment is warranted for students who withdraw from term-based programs offered in modules. That is, if a student returns to a term-based credit-hour program offered in modules prior to the end of the payment period or period of enrollment, the student is treated as if he or she did not cease attendance, and is eligible to receive any title IV, HEA program funds for which he or she was eligible prior to withdrawal, including funds that were returned by the institution or student under the provisions of § 668.22. However, the institution must make adjustments to reflect any changes to the student's enrollment status.

While we acknowledge that requiring institutions to treat as withdrawals students who cease attending at any point during the payment period or period of enrollment, rather than just those students who cease attending before completing at least one course, is likely to increase the number of Return of Title IV Fund calculations an institution must perform for these programs, we note that institutions have always had to track students in module programs beyond the first course/module to determine whether a student began attendance in all the courses they were scheduled to attend, in case the student's enrollment status changed upon ceasing attendance, resulting in required recalculations of the title IV, HEA program funds awarded. While we recognize that some students must withdraw due to circumstances beyond their control, we are concerned with the commenters' contention that there will be a substantial increase in burden due to the number of students who cease attendance during a payment period or period of enrollment. We do not believe that it is in a student's best interest to withdraw and we would expect that institutions are doing all they can to prevent withdrawals through counseling, student support services, and proper enrollment procedures. In response to the commenter who believed the proposed regulations would force institutions to delay disbursements to prevent the institution or student from having to return unearned title IV, HEA program funds if they withdraw, we are providing that, under amended § 668.164(i), an institution would be required to provide a way for a Federal Pell Grant eligible student to obtain or purchase required books and supplies by the seventh day of a payment period under certain conditions if the student were to have a title IV credit balance.

The commenter who noted that the determination of title IV, HEA program funds that are earned by a student who withdraws from a clock-hour program are based on scheduled hours is correct in that once it has been determined that a student has not completed the payment period or period of enrollment, the percentage of the payment period or period of enrollment completed is determined by dividing the total number of clock hours in the payment period or period of enrollment into the number of clock hours scheduled to be completed at the time the student ceased attending (§ 668.22(f)(1)(ii)(A)). However, a student has not completed a clock hour payment period or period of enrollment until he or she has completed all the hours and all of the weeks of instructional time that he or she was scheduled to attend in that period.

Because different institutions use different names to refer to this type of program structure, in amended § 668.22(l)(6), we have defined the term "offered in modules" to mean if a course or courses in the program do not span the entire length of the payment period or period of enrollment. In addition, to clarify the types of programs that are considered to be nonstandard-term programs or nonterm programs, in amended § 668.22(l)(8), we have defined the term "nonstandard-term program" as

a term-based program that does not qualify under 34 CFR 690.63(a)(1) or (2) to calculate Federal Pell Grant payments under 34 CFR 690.63(b) or (c). We note that nonterm programs include any program offered in clock hours for title IV, HEA program purposes as well as any nonterm credit-hour program.

Changes: Section 668.22(a)(2) has been revised to provide that, for a payment period or period of enrollment in which courses in the program are offered in modules, a student who would otherwise be considered to have withdrawn from an institution because, prior to ceasing attendance the student has not completed all of the days or scheduled hours he or she was scheduled to attend, is not considered to have withdrawn if the institution obtains written confirmation from the student at the time of withdrawal that he or she will attend a module that begins later in the same payment period or period of enrollment, provided that, for a nonterm or nonstandard-term program, that module begins no later than 45 days after the end of the module the student ceased attending. However, if that student does not return as scheduled, the student is considered to have withdrawn from the payment period or period of enrollment and the student's withdrawal date and the total number of calendar days in the payment period or period of enrollment would be the withdrawal date and total number of calendar days that would have applied if the student had not provided written confirmation of future attendance in accordance with § 668.22(a)(2)(ii)(A).

Section 668.22(a)(2) also has been revised to cross-reference § 668.4(f), which provides that, if a student withdraws from a nonterm credit-hour or clock-hour program during a payment period or period of enrollment and then reenters the same program within 180 days, the student remains in that same period when he or she returns and, subject to conditions established by the Secretary, is eligible to receive any title IV, HEA program funds for which he or she was eligible prior to withdrawal, including funds that were returned by the institution or student under the provisions of this section. Section 668.22(a)(2) has been further revised to provide that, if a student withdraws from a term-based credit-hour program offered in modules during a payment period or period of enrollment and reenters the same program prior to the end of the period, the student remains in the same payment period or period of enrollment when he or she returns and, subject to conditions established by the Secretary, is eligible to receive any title IV, HEA program funds for which he or she was eligible prior to withdrawal, including funds that were returned by the institution or student under the provisions of this section.

In addition, § 668.22(a)(2) has been revised to provide that, if a student in a nonterm or nonstandard-term program is not scheduled to begin another course within a payment period or period of enrollment for more than 45 calendar days, the institution must treat the student as a withdrawal for title IV, HEA program fund purposes, unless the student is on an approved leave of absence, as defined in § 668.22(d).

Finally, § 668.22(a)(2) has been revised to clarify that a student in a clock hour program has not completed a payment period or period of enrollment until the student has completed both the weeks of instructional time and the clock hours scheduled to be completed in the period.

Section 668.22(l)(6) and (8) has been revised to add definitions of a program that is offered in modules and of a nonstandard-term program.

Comment: Approximately 40 commenters asked the Department to clarify how the regulations would apply in different situations. Some of these commenters questioned how enrollment status changes due to an institution's add/drop policy would be differentiated from a withdrawal. For example, some commenters asked for guidance on the handling of title IV, HEA program funds when a student withdraws without beginning attendance in all courses, or notifies the institution that he or she will not be attending a future module that he or she was scheduled to attend. One commenter believed that the proposed regulations would be in conflict with the Department's guidance that allows a Direct Loan to be disbursed based on anticipated enrollment during a term, such as a summer term, where a student is enrolled for two consecutive courses. The commenter's understanding is that if the student does not begin the second course to establish half time enrollment, the student can keep the funds.

Discussion: A student that begins attending but then ceases attendance in all classes during a payment period is a withdrawal unless the institution obtains written confirmation from the student that he or she plans to attend a course that begins later in the payment period or period of enrollment, as applicable. Anytime a student begins attendance in at least one course, but does not begin attendance in all the courses he or she was scheduled to attend, regardless of whether the student is a withdrawal, the institution must check to see if it is necessary to recalculate the student's eligibility for Pell Grant and campus-based funds based on a revised enrollment status and cost of education (34 CFR 690.80(b)(2)(ii)). If the student is a withdrawal, this recalculation must be done before performing a Return of Title IV Funds calculation, and the institution must use the recalculated amounts of aid in the Return of Title IV Funds calculation. If the student has not begun attendance in enough courses to establish a half-time enrollment status, the institution may not make a first disbursement of a Direct Loan to the student (34 CFR 685.303(b)(2)(i)), or a second disbursement of Pell Grant funds, although the funds are included as aid that could have been disbursed in the Return of Title IV Funds calculation. Courses that were officially dropped prior to the student ceasing attendance are not days that the student was scheduled to attend, unless the student remained enrolled in other courses offered on those days. Correspondingly, courses that were officially added prior to the student ceasing attendance are days the student was scheduled to attend.

If a student officially drops a course or courses he or she was scheduled to attend and doing so does not result in the student no longer attending any courses, the student is not a withdrawal, and the dropped courses are handled as changes in enrollment status, as applicable.

An institution can determine whether a student in a program offered in modules is a withdrawal by answering the following questions:

(1) After beginning attendance in the payment period or period of enrollment, did the student cease to attend or fail to begin attendance in a course he or she was scheduled to attend? If the answer is no, this is not a withdrawal. If the answer is yes, go to question 2.

(2) When the student ceased to attend or failed to begin attendance in a course he or she was scheduled to attend, was the student still attending any other courses? If the answer is yes, this is not a withdrawal, however other regulatory provisions concerning recalculation may apply. If the answer is no, go to question 3.

(3) Did the student confirm attendance in a course in a module beginning later in the period (for nonterm and nonstandard term programs, this must be no later than 45 calendar days after the end of the module the student ceased attending). If the answer is yes, this is not a withdrawal, unless the student does not

return. If the answer is no, this is a withdrawal.

Take, for example, a student who is a recipient of title IV, HEA program funds who is scheduled to complete two courses in each of the first two of three modules within the payment period.

Scenario 1: The student begins attendance in both courses in the first module, but ceases to attend both courses after just a few days and does not confirm that he will return to any courses in modules two or three. The student is a withdrawal because he or she ceased to attend courses he or she was scheduled to attend (Yes to question 1); was not still attending any other courses (No to question 2); and did not confirm attendance in a course in a module beginning later in the period (No to question 3).

Scenario 2: If, however, the student begins attendance in both courses in the first module, but drops just one of the courses after just a few days, the student is not a withdrawal. Although the student ceased to attend a course he or she was scheduled to attend (Yes to question 1), the student was still attending another course (Yes to question 2).

Scenario 3: If the student completes both courses in module one, but officially drops both courses in module two while still attending the courses in module one, the student is not a withdrawal. Because the student officially dropped both courses in module two before they began, the student did not cease to attend or fail to begin attendance in a course he or she was scheduled to attend (No to question 1). However, because the student did not begin attendance in all courses, other regulatory provisions concerning recalculation may apply.

Changes: None.

Comment: Several commenters asked the Department to clarify what it means to "complete all the days" or "complete all of the clock hours" in a payment period or period of enrollment. More specifically, commenters asked if students would be required to attend every day of every course, or be in attendance on the last day of the payment period or period of enrollment. Some of the commenters noted that, due to individual student schedules, students do not attend all days in the payment period or period of enrollment. Commenters were concerned that a student who was not in attendance on the last day of the payment period would be counted as a withdrawal. To address this concern, one commenter suggested that the wording of the regulations be changed to say that a student is considered to have withdrawn from a payment period or period of enrollment if the student does not complete *substantially* all of the days in the payment period or period of enrollment.

Some of the commenters asked how limited absences (for example, for illness), incompletes, and leaves of absence would be treated. Commenters also asked if a student is considered to have completed a course in a payment period or period of enrollment if the student received a grade for that course or, for a clock-hour program, earns all the clock hours for the course, regardless of absences. A couple of the commenters asked if the definition of what it means to complete all the days or complete all the clock hours would affect in-school deferments for title IV, HEA program loans. Some commenters asked under what circumstances an institution would have to prove that the student attended all days in a period and what documentation would constitute that proof. Commenters asked if the issue would arise only if all of a student's grades are Fs or if it becomes otherwise apparent that the student has ceased attendance without formally withdrawing. A few commenters wanted to know how intersessions—a period of time between terms when courses are offered—would be handled.

A few commenters asked the Department to clarify what the length of the payment period or period of enrollment is when performing a Return of Title IV Funds calculation for a withdrawn student who was not scheduled to attend courses over the entire term and how an institution would determine whether the student has completed more than 60 percent of the payment period or period of enrollment (*i.e.,* earned all of his or her title IV, HEA program funds). One commenter believed there would be no possible way for an institution to determine the days the student was scheduled to attend for an on-line class that is self-paced as there are no "scheduled days" in a self-paced program.

Discussion: Section 668.22(f)(1)(i) has always required an institution to determine the days in the payment period or period of enrollment that were completed by a student who withdraws from a program offered in credit hours in order to determine the percentage of the payment period or period of enrollment completed by the student. These final regulations do not change what it means to complete days for credit-hour programs, or clock hours for clock-hour programs, for purposes of the determination of the amount of aid earned by a student who withdraws from a program, nor do they change an institution's responsibility for having a procedure for determining whether a title IV recipient who began attendance during a period completed the period or should be treated as a withdrawal. The Department does not require that an institution use a specific procedure for making this determination; however, we have provided guidance to assist institutions in making these determinations. For example, consistent with the Department's guidance provided in its Dear Colleague Letter of November 2004, GEN–04–12, Return of Title IV Aid, an institution may presume a student completed the period in a program offered in modules if the student did not officially withdraw from the institution and received a passing grade in all courses the student was scheduled to attend during the period. If a student in a program offered in modules does not receive a passing grade in the last course or courses he or she was scheduled to attend, the institution must otherwise demonstrate that the student completed the period, which can sometimes be done using the institution's grading policy if the failing grades reflect whether the student participated in those courses. Consistent with current requirements, if a student is determined to have withdrawn from an institution under § 668.22, the student is no longer considered to be enrolled and in attendance at an institution and, therefore, is ineligible for an in-school deferment and must be reported by the institution as a withdrawal for this purpose (34 CFR 674.34(b)(1)(i) and 34 CFR 685.204(b)(1)(i)(A)).

Consistent with the guidance provided in the Department's Dear Colleague Letter of December 2000, GEN–00–24, Return of Title IV Aid-Volume #1, for the treatment of title IV, HEA program funds when a student withdraws without completing at least one course in a payment period or period of enrollment, to determine whether the percentage of the payment period or period of enrollment completed for a student who withdraws from a program offered in modules, the institution would include in the denominator (the total number of calendar days in the payment period or period of enrollment) all the days in the modules the student was scheduled to attend, except for scheduled breaks of at least five consecutive days and days when the student was on an approved leave of absence. The numerator would include the number of the total days in the payment period or period of enrollment that the student has

completed. For example, a student was scheduled to attend an intersession of three weeks of instructional time at the end of a fall semester, and, in accordance with the Department's past guidance, the institution has included that intersession with the fall term for purposes of the program's academic calendar when determining the payment of title IV, HEA program funds. In this circumstance the days in that intersession are included in the total number of days in the payment period for that student, except for scheduled breaks of at least five consecutive days, and days in which the student was on an approved leave of absence. Note that all the courses in the fall term are considered modules for purposes of a Return of Title IV Funds calculation when the intersession is included in the payment period.

Regarding the comment that there would be no possible way for an institution to determine the days the student was scheduled to attend for an on-line class that is self-paced, we note that, for Title IV, HEA program purposes, an institution is required to determine a program schedule for a payment period or period of enrollment.

Changes: Section 668.22(f)(2)(ii) has been revised to clarify that, when determining the percentage of payment period or period of enrollment completed, the total number of calendar days in a payment period or period of enrollment does not include, for a payment period or period of enrollment in which any courses in the program are offered in modules, any scheduled breaks of at least five consecutive days when the student is not scheduled to attend a module or other course offered during that period of time.

Withdrawal Date for a Student Who Withdraws From an Institution That Is Required To Take Attendance (§§ 668.22(b) and 668.22(l))

Comment: Commenters were unsure about the effect of the proposed changes, and a number of them asked for clarification. A few commenters expressed concern that the Department was requiring institutions to take attendance. Others thought that, in instances in which individual faculty members take attendance by choice, the entire institution would then be considered an institution required to take attendance. Some commenters believed that if an institution or an outside entity required attendance taking for students in some but not all programs, then the institution would be considered one that has to take attendance for students in all programs. Other commenters believed that the proposed regulations would require institutions that take attendance for a limited period of time and use those attendance records, to continue to take attendance beyond that point.

Some commenters advocated a more restricted definition of an institution that is required to take attendance, suggesting that an institution should only be required to take attendance if an outside entity collects and maintains those records. One commenter did not believe that an outside entity should be able to require an institution to take attendance, and others opposed the provision that institutions required by an outside entity to take attendance must use these attendance records for the purposes of a Return of Title IV Funds calculation.

In general, we received comments on the application of the regulations to subpopulations of students and on the use of attendance records during a limited period. With respect to attendance requirements for subpopulations of students, most commenters did not object to the current policy that if some students at the institution are subject to attendance taking requirements, then institutions would have to follow the last day of attendance regulations for those students. Other commenters agreed with this position, but believed that this condition should only be applied when taking attendance is required for the entire payment period, for all classes the student enrolls in, and only when imposed by an outside entity. One commenter disagreed with our position on the treatment of subpopulations of students, recommending that we modify the regulations to specify that the taking attendance requirement must be imposed by an outside entity and be applicable to the entire institution in order for an institution to be considered one required to take attendance.

One commenter supported the proposed change that if an institution requires the taking of attendance for a limited period of time, then those attendance records must be used to determine a withdrawal date. A few commenters objected to considering institutions that take attendance during a limited period of time to be institutions required to take attendance, even for only that limited period, suggesting that this provision should only be applied when taking attendance is required for the entire payment period or period of enrollment.

Discussion: The regulations do not require institutions to take attendance. Instead, under the regulations the Department considers an "institution that is required to take attendance" to include not only an institution that is required to take attendance by an outside entity, but also an institution that itself requires its faculty to take attendance in certain circumstances.

Regarding faculty attendance records, if an institution does not require faculty to take attendance, but a faculty member chooses to take attendance, then the institution would not then be considered an institution required to take attendance. If, however, the institution requires its faculty to take attendance, whether at the program, department, or institutional level, then those attendance records must be used by the institution in determining a student's date of withdrawal. Institutions that do not require the taking of attendance and are not required to take attendance by an outside entity are not prohibited from using individual faculty members' attendance records in determining a student's date of withdrawal. The Department encourages institutions to use the best information available in making this determination.

We do not agree with commenters who believed that if attendance taking is required for some students, then the institution would be required to take attendance for all students. These final regulations do not change our existing policy. Under our current guidance and regulations, if an outside entity requires an institution to take attendance for only some students, for instance, for students receiving financial assistance under a State program, the institution must use its attendance records to determine a withdrawal date for those students. Similarly, under these final regulations, if the institution itself requires attendance taking for students in certain programs or departments, then the institution must use its attendance records to determine a withdrawal date for students in those programs or departments. These attendance taking regulations only apply when an institution either requires the taking of attendance or is required by an outside entity to take attendance, but not when a student is required to self-certify attendance directly to an outside entity. For example, a veterans' benefits requirement that benefit recipients self-report attendance would not result in an institutional requirement to take attendance of those students unless the institution is required to verify the student's self-certification.

An institution that is required by an outside entity to take attendance during a limited period, or that requires its faculty to do so, must use any attendance records from that limited

period in determining a withdrawal date for a student. For students in attendance at the end of that limited period, if the institution is not required to take attendance and does not require its faculty to do so, then the guidelines for determining a withdrawal date for an institution that is not required to take attendance would apply. The Department continues to believe that the best data available should be used in determining a student's withdrawal date from classes, and, accordingly, if an institution requires the taking of attendance or is required to take attendance for any limited period, then those records must be used.

Lastly, we disagree with the comment that an outside entity should not be able to require an institution to take attendance. We continue to believe that our policy that an "institution that is required to take attendance" means an institution that is required to take attendance by an outside entity is a reasonable interpretation of the statute. The phrase "required to take attendance" presupposes that an entity has this requirement, and under this regulation, that entity may be either the institution itself or a separate entity.

Changes: None.

Comment: A few commenters expressed concern about who would decide what "required to take attendance means." Specifically, they were concerned that the Department would determine that an institution or outside entity had a requirement that attendance be taken at an institution, even if the institution or outside entity disagreed with that conclusion. The commenters believed that the entity requiring the taking of attendance should make the determination about when attendance must be taken and what kind of documentation to support attendance taking is necessary, and that the Department should not superimpose its view of attendance taking on that entity. In particular, a few commenters opposed the idea that the Department would consider clock-hour institutions to be institutions required to take attendance if an outside entity or the institutions themselves did not believe that they were. One commenter recommended that we remove § 668.22(b)(3)(i)(C), believing that an institution could be found in noncompliance by the Department if the institution or outside entity had a different interpretation of whether taking attendance was required.

A couple of commenters requested clarification that, in a case where a student must be physically present to demonstrate a competency or skill, attendance taking would not be automatically required. Instead, the institution or another outside entity would have the responsibility of deciding whether attendance taking was necessary. Further, one commenter suggested that a "requirement" to take attendance should mean a written regulation or policy tied to determining seat time and not a quality inherent to the type of program.

Discussion: For institutions that are required to measure the clock hours a student completes in a program, the Department believes that this is, in substance, a requirement for those institutions to take attendance for those programs since they satisfy both the requirement of determining that a student is present and that the student is participating in a core academic activity. The Department is looking at the substance of the information that is available rather than the way that information is described or portrayed by the institution or outside entity. If the institution is required to collect information or record information about whether a student was in attendance during a payment period, or during a limited period of time during a payment period, that information should be used to determine if the student ceased attendance during that period.

Changes: None.

Comment: Commenters had a number of questions about the documentation and the maintenance of attendance records, generally requesting clarification about how attendance must be documented and what constitutes attendance in an academic or academically-related activity. One commenter asked for specific guidance as to the definition of an attendance record, and requested clarification as to how often attendance must be taken at an institution required to take attendance. Another commenter asked what documentation would be sufficient to demonstrate attendance in cases in which students do not physically attend class but watch a video or podcast of the lecture remotely. Similarly, a commenter asked whether a student would be considered in attendance if he or she participated in an academically-related activity but was not physically present, such as working with an instructor by phone or e-mail. A few commenters requested clarification and guidance about what the Department believes constitutes attendance in a distance education context and how an institution should document that attendance. One commenter requested that the Department ensure that the evidence required of last day of attendance in online programs for the purpose of a Return of Title IV Funds calculation be substantially comparable to that required of traditional, face-to-face programs. The same commenter was also concerned that the Department would be requiring documentation beyond that required in the past without providing sufficient time for institutions to implement this change.

Discussion: In accordance with § 668.22(b)(2) and (c)(4), an institution must document a student's withdrawal date and maintain that documentation as of the date of the institution's determination that the student withdrew. As noted in the Federal Student Aid Handbook (FSA Handbook), the determination of a student's withdrawal date is the responsibility of the institution; a student's certification of attendance that is not supported by institutional documentation would not be acceptable documentation of the student's last date of attendance at an academically-related activity. As with other title IV, HEA program records, documentation of attendance must be retained and be available for examination in accordance with the provisions of § 668.24. If an institution is required to take attendance or is an institution that is not required to take attendance, but is using a last date of attendance at an academically-related activity as a withdrawal date, it is up to the institution to ensure that accurate records are kept for purposes of identifying a student's last date of academic attendance or last date of attendance at an academically-related activity. An institution must also determine and maintain the records that most accurately support its determination of a student's withdrawal date and the institution's use of one withdrawal date over another if the institution has conflicting information.

To count as attendance for title IV, HEA program purposes, attendance must be "academic attendance" or "attendance at an academically-related activity." We have defined those terms in new § 668.22(l)(7) by providing examples of academically-related activities that institutions that are not required to take attendance may use in determining a student's last date of attendance at an academically-related activity. Certainly, traditional academic attendance is acceptable, *i.e.,* a student's physical attendance in a class where there is an opportunity for direct interaction between the instructor and students. Additionally, academically-related activities may include an exam, a tutorial, computer-assisted instruction, academic counseling, academic advising, turning in a class assignment, or attending a study group that is assigned by the institution. The

Department has provided further guidance on this policy in the FSA Handbook, specifying that living in institutional housing and participating in the institution's meal plan are examples of activities that are not academically-related. The Department finds it acceptable for an institution that is required to take attendance to use the institution's records of attendance at the activities listed in § 668.22(l)(7) as evidence of attendance, provided there is no conflict with the requirements of the outside entity that requires the institution to take attendance or, if applicable, the institution's own requirements.

However, in these final regulations, we are revising the list of acceptable activities because the Secretary no longer considers participation in academic counseling or advising to be an activity that demonstrates academic attendance or attendance at an academically-related activity. The Secretary has encountered several instances of abuse of this particular provision by institutions that contact students who have ceased attendance, and treated that contact as "academic counseling" to facilitate a later withdrawal date, resulting in an inflated amount of "earned" title IV, HEA program funds. The Secretary does not view such contact as evidence of academic attendance, but notes that if the student resumed attendance and completed the period of enrollment no return calculation would be needed. Even if the student resumed attendance and later stopped attending, the student's participation in other activities that are already included on the list of academic activities could be used to establish a later withdrawal date. Thus, participation in academic counseling or advising without subsequent participation in other academic or academically-related activities is no longer an acceptable example of participation in an academically related activity.

With respect to what constitutes attendance in a distance education context, the Department does not believe that documenting that a student has logged into an online class is sufficient by itself to demonstrate academic attendance by the student because a student logging in with no participation thereafter may indicate that the student is not even present at the computer past that point. Further, there is also a potential that someone other than the student may have logged into a class using the student's information to create the appearance the student was on-line. Instead, an institution must demonstrate that a student participated in class or was otherwise engaged in an academically-related activity, such as by contributing to an online discussion or initiating contact with a faculty member to ask a course-related question. This position is consistent with the current guidance the Department has provided to individual institutions regarding the applicability of the regulations to online programs.

When assessing an institution's compliance with any program requirement, the Department looks at information provided by the institution in support of the compliance of its policies and procedures.

Changes: We have removed the reference to academic counseling and advising in current § 668.22(c)(3)(ii) and have added to the regulations a combined definition of *academic attendance* and *attendance at an academically-related activity* in § 668.22(l)(7) to clarify that both institutions required to take attendance and those that are not required to take attendance may use institutionally-documented attendance at certain activities as a student's withdrawal date. We have also redesignated current § 668.22(c)(3)(i) as § 668.22(c)(3) to reflect the removal of § 668.22(c)(3)(ii).

We have added to the definition at § 668.22(l)(7) both existing guidance from the FSA Handbook and examples of academic attendance for online programs. For additional clarity, we have specified that physically attending a class where there is an opportunity for direct interaction between the instructor and students is considered academic attendance and have specified that participating in academic counseling or advising is not considered academic attendance.

Comment: A number of commenters opposed the proposed changes, believing that they would impose additional burdens on institutions, be too complex to administer, and prove counterproductive to the goals of the Department.

In terms of additional burden, the commenters argued that the proposed regulations could become too complex, noting that institutions might have different attendance taking requirements, depending on the program or academic department. Others suggested that it would be too confusing and burdensome to take attendance for only a limited period. Two commenters did not support adverse actions or audit findings by the Department against institutions that did not demonstrate 100 percent compliance with the attendance taking requirements.

Commenters also pointed out potential barriers to administering these regulations properly. A few believed that it would be difficult to ensure complete and accurate attendance records across faculty and programs, arguing that these records would not necessarily fully reflect a student's attendance at academically-related activities. A couple of commenters questioned the feasibility of achieving full compliance with attendance taking policies across faculty. One commenter did not believe that attendance records held by individual faculty members or departments should constitute available data. One commenter believed that the additional complexity of the regulations would make it impossible to complete a Return of Title IV Funds calculation in the required timeframe.

The commenters also argued that the additional burden and complexity of the regulations would ultimately undermine attempts to mitigate the potential for fraud and abuse of Federal funds and would hamper attempts to improve student success in higher education. Specifically, a number of commenters believed that the proposed regulations would create an economic disincentive to taking attendance, causing many institutions that voluntarily take attendance to stop doing so. They argued that this provision would make it more difficult to identify a date on which a student has withdrawn from classes, compelling more institutions to use a mid-point date when performing a Return of Title IV Funds calculation. The commenters further asserted that institutions take attendance for a variety of reasons, and that ending this practice would lead to lower retention and graduation rates and, subsequently, higher student loan default rates.

Due to the perceived complexity of this issue, two commenters requested that the Department delay the implementation of these regulations. One suggested gathering additional input from the community to develop proposed regulations, while the other recommended reconvening a negotiated rulemaking committee to further consider these issues.

Discussion: We appreciate the concerns of the commenters about possible harms that might come from the proposed changes. The goal of determining the amount of funds a student earned before he or she stopped attending should be a shared one, and the claim that the institutions would stop taking attendance in order to increase the funds a student would receive beyond the point where the student stopped attending is troubling. The Department continues to believe

that institutions should use the best data available in determining a student's withdrawal date from classes. Accordingly, if an institution requires the taking of attendance or is required to take attendance for any limited period of a semester or other payment period, then those records should be used when determining a student's date of withdrawal for the purposes of a Return of Title IV Funds calculation.

With respect to comments regarding the complexity of the regulations, they address the taking attendance policies that are either required by an outside party or required by the institution itself. Institutions would already be expected to follow these requirements, and the regulations provide for that attendance information to be used when it indicates a student has stopped attending during this limited period. For students in attendance at the end of that limited period, the guidelines for determining a withdrawal date for an institution that is not required to take attendance would apply until the start of the next period during which attendance taking is required. Any increase in overall burden is mitigated since this requirement is tied to policies for taking attendance that are already in place at institutions, and uses the existing requirements for determining the amount of Federal funds a student earned based upon that information. Cases of noncompliance are addressed on a case by case basis when the occurrences are isolated, and institutions are expected to take appropriate corrective actions when an error is brought to their attention during a self-audit, a compliance audit, or a program review. Accordingly, the Department does not believe it is necessary to delay the implementation date of these regulations, or to reopen the issue for negotiation.

Changes: None.

Comment: A few commenters opposed the proposed changes, arguing that the proposed regulations exceed the Secretary's authority under the law. The commenters believed that Congress intentionally allowed institutions the option to use the midpoint of the payment period because it recognized that institutions have already incurred costs when a student fails to withdraw officially. A few commenters believed that the definition of last day of attendance under the statute is sufficient and that the Department should not make any changes to the regulations. Some commenters opposed the proposal that an "institution required to take attendance" includes an institution that takes attendance voluntarily, arguing that the wording of the statute, which states "institutions that are required to take attendance" and not "institutions that take attendance," indicates that Congress did not intend to include institutions that choose to take attendance in that category. Other commenters expressed strong support for the broadened definition.

Discussion: Under the law, institutions that are required to take attendance must use that information to determine when students who do not complete a class stopped attending. It is common for the Department to view requirements established by an institution, such as an institutional refund policy, as being a requirement for that institution. The Secretary believes it is reasonable to interpret the law to include instances where the institution itself is establishing the requirement to take attendance for a program, a department, or the entire institution. The regulations do not include instances where a faculty member would monitor student attendance but was not required to do so by the institution. Furthermore, there is no reason that attendance information required by an institution would be different in substance from attendance information required by other entities. It is the process of taking attendance itself that leads to the information being available, regardless of whether it is required by the institution or an outside entity. The law provides that institutions that are required to take attendance must use that information for students who stop attending, and the regulations define the term "required to take attendance" to include instances where the institution itself is establishing that requirement for a program, a subpopulation of a program, a department, or the entire institution. The Secretary also believes that this information should be used when it is available, even if attendance is not required and is only taken for a limited period during the payment period or period of enrollment.

Changes: None.

Comment: A number of commenters requested clarification about whether an institution would be required to perform a Return of Title IV Funds calculation for students that were not in attendance on the last day of a limited census period. Specifically, a few commenters believed that § 668.22(b)(3)(iii)(B) could be interpreted in different ways. First, it could be read to mean that an institution must treat a student who is not in attendance on the last day of a limited period of attendance taking as a withdrawal, even if the student continued to attend classes or was engaged in another academically-related activity after the end of the limited period. Along these lines, a few commenters pointed out that it could be difficult for an institution to ascertain whether a student actually withdrew, or whether the student was in fact only absent for a class or two. Second, it could be read to mean that if an institution has attendance records during a limited period, the institution must use those attendance records, as the best available source of information, in determining a student's date of withdrawal. One commenter believed that this interpretation could require an institution not otherwise required to take attendance to take attendance beyond the end of the limited attendance period to determine if the student came back. The commenter further requested clarification about when an institution in this situation would have to determine that the student actually withdrew.

Three commenters provided potential modifications to the language related to taking attendance during a limited time period. The first suggested replacing the words "in attendance at the end of the limited period" with the words "in attendance during the limited period" to account for the fact that a student might have attended earlier in the limited period but was only absent on that last day, perhaps due to illness or another legitimate reason. The second commenter recommended modifying the words "a student in attendance" to read "a student determined by the institution to be in attendance" in order to give institutions the necessary flexibility to determine that a student actually withdrew from all courses and was not just absent on that particular day. The third commenter suggested replacing the phrase "in attendance at the end of the limited period" with "in attendance at the last regularly scheduled class meeting prior to the census date" to account for courses that do not meet on the last day of the limited period.

One commenter believed that the Department should require institutions to have a limited number of hours or credits that a student may miss without having to be considered a withdrawal.

Discussion: Standing alone, information that a student was absent on the last date attendance was taken during a limited period of time is the best evidence that the student has ceased attendance. That presumption is easily refuted when a student has gone on to complete the payment period, since the student will have earned a grade for the class. For a student who did not complete the class, the institution may determine whether there

is evidence that the student was academically engaged in the class at a point after the limited period when attendance was taken. Unless an institution demonstrates that a withdrawn student who is not in attendance at the end of the limited period of required attendance taking attended after the limited period, the student's withdrawal date would be determined according to the requirements for an institution that is required to take attendance. That is, the student's withdrawal date would be the last date of academic attendance, as determined by the institution from its attendance records. If the institution demonstrates that the student attended past the end of the limited period, the student's withdrawal date is determined in accordance with the requirements for an institution that is not required to take attendance. So, for a student the institution has determined attended past the limited period and has unofficially withdrawn, the student's withdrawal date is the midpoint of the payment period of period of enrollment unless the institution uses a later date when the student was academically engaged in the class. The institution therefore has the option to document a student's last date of attendance at an academically-related activity, but an institution is not required to take attendance past the end of the limited period of attendance taking.

We do not interpret a requirement to take attendance in one class for a "census date" as taking attendance for purposes of this regulation. For example, some institutions have courses that meet only on Mondays and Wednesdays, and other courses that meet on Tuesdays and Thursdays. In those cases, a "census date" may be taken on two different days in order to establish attendance in both sets of courses that meet on alternate days. With respect to the suggestion that an institution be permitted to have a policy to establish a different procedure or presumption for a student who is absent at the end of a limited period of attendance taking, this is addressed in practice by having the institution determine if the student participated in an academically related activity at a later point in the payment period, not by adding a regulation that otherwise ignores an absence on the last date attendance was taken for the student.

Changes: None.

Comment: A few commenters believed that the proposed regulations would cause a greater financial burden for a student who withdraws from courses prior to the midpoint of the semester. A few commenters noted that institutions that voluntarily maintain attendance records would now have to use those records to determine the student's actual last date of attendance instead of using a midpoint date. In the case of clock-hour institutions, commenters were concerned that institutions would be required to use an actual last date of attendance instead of a scheduled last date of attendance. In these situations, a student might receive fewer funds to cover costs incurred for the entire payment period, even if he or she withdrew before the end of that payment period.

Discussion: The Department recognizes that using an actual last date of attendance instead of a midpoint of the semester may require an institution to return more unearned aid; this outcome, however, is equitable. For institutions using credit hours that are determined to be required to take attendance for all or a part of the period, the regulation may establish an earlier date of withdrawal for a student that stops attending during a period when attendance is taken. This outcome provides a more consistent treatment with other institutions that have programs where student progress is tracked by measuring clock hours, and more closely tracks the requirements in the law that students earn title IV funds as they progress through a period until they complete more than 60 percent of the period. Institutions are responsible for determining the amount of title IV, HEA program assistance that a student earned under the applicable regulations, and unearned funds for a student must be returned in accordance with the procedures in § 668.22. By establishing a more accurate date a student ceased attendance during a period when attendance is taken, the regulation will tend to increase the amount of unearned funds that are used to reduce the loan amounts students received for that period under § 668.22(i).

Changes: None.

Comment: A number of commenters from cosmetology schools believed that the proposed regulations would put some institutions in a position of being unable to comply with both Federal and State regulations. Specifically, they were concerned that the proposed regulations would require institutions that are credit-hour institutions to become clock-hour institutions if they take attendance, forcing them, depending on individual State laws, to be out of compliance with State requirements that those institutions use credit hours.

Discussion: We do not agree that these regulations create a conflict between Federal and State laws. Institutions that use clock hours for a program for State reporting or licensing purposes will be treated as institutions that are required to take attendance under this regulation, and the clock hours attended will be used to determine when a student ceased attendance. To the extent that such an institution uses credit hours for its academic purposes, that institution will not be affected by this regulation. The requirement to determine the amount of aid a student earned before ceasing attendance is separate from the question of whether that institution uses credit hours for academic purposes. The clock hours are used to measure the amount of funds a student earned, the same way that other institutions that are required to take attendance will measure earnings under this regulation.

Changes: None.

Comment: A few commenters suggested modifications to the regulatory language that would require institutions to use the best information available in determining a student's withdrawal date. Specifically, one commenter recommended amending § 668.22(c) to make the midpoint of the payment period the "last resort" option for determining a student's last date of attendance when a student unofficially withdraws such that a school would be required to use the midpoint of the payment period only in the absence of other documentation of a student's attendance. Another commenter recommended that we require institutions to use the best available data when determining a withdrawal date instead of allowing schools that are not required to take attendance to use a default date of the midpoint of the payment period of period of enrollment. The commenter believed that using this language would best support the Department's goals.

Discussion: We do not believe that the suggested modifications are supportable under the HEA because the requirement to use attendance information is only applicable for periods when attendance taking is required. Under section 484B(c)(1) of the HEA, if a student stops attending an institution at a point where attendance taking is not required, the institution uses the midpoint of the payment period, or may use a later date when the student was participating in an academically related activity.

Changes: None.

Comment: One commenter was concerned that if an institution that is required to take attendance did not have a valid ISIR before a student's last date of attendance, the student would be unintentionally penalized and unable to receive title IV, HEA program assistance.

Discussion: We do not agree. An institution must act in accordance with § 668.164(g), which contains the requirements for making a late disbursement, including circumstances where a student did not have a valid SAR or valid ISIR on the student's last date of attendance.

Changes: None.

Verification and Updating of Student Aid Application Information (Subpart E of Part 668)

General (§ 668.51)

Comment: One commenter questioned whether the Department would describe, in the final regulations, our plans to provide training to assist institutions to prepare for and comply with verification requirements reflected in subpart E of part 668.

Discussion: The Department will issue guidance through the *Application and Verification Guide* and other training materials, as needed. The Department will also provide training through our regional training officers. For information on our current and future training activities and learning resources, institutions should visit the Training for Financial Aid Professionals Web site at *http://www2.ed.gov/offices/OSFAP/training/index.html.*

Changes: None.

Comment: Some commenters requested that the Department delay implementing the new verification requirements until the 2012–13 award year to give institutions sufficient time to train their staff and make the necessary system changes.

Discussion: The Department recognizes that institutions may need time to make changes to their institutional processing systems to comply with the requirements in subpart E of part 668. Accordingly, as described in the DATES section of these final regulations, we will delay the effective date of the changes to this subpart until July 1, 2012, which means that it will be effective for the 2012–13 award year.

Changes: None.

Comment: Some commenters noted that because no new loans can be certified under the Federal Family Education Loan (FFEL) Program effective July 1, 2010, all references to the FFEL Program and loan certification should be removed from the regulatory language in this subpart.

Discussion: We concur with the commenters. We had not removed the references to FFEL in the NPRM because that notice was already under development when the legislative change to end new lending under the FFEL Program was enacted. Our intent was to make the necessary technical corrections in the final regulations.

Changes: Throughout subpart E of part 668, we have removed references to the FFEL Program and any corresponding regulatory citations. Specifically, we have removed references to "Subsidized Stafford Loan," "Unsubsidized Stafford Loan," "Federal PLUS Loan," and "lender" as well as certifications for Subsidized Stafford loans from §§ 668.52, 668.58, and 668.60.

Definitions (§ 668.52)

Comment: Some commenters expressed support for the Department's efforts to simplify and clarify the definitions used throughout the verification regulations under subpart E of part 668. One commenter noted that changing the defined term *application* to *FAFSA,* and using the term *FAFSA information* in place of the term *application* helps distinguish the FAFSA from other financial aid applications used at many institutions.

Discussion: We appreciate the commenters' support.

Changes: None.

Comment: Two commenters suggested that we change the names of the defined terms *FAFSA information, subsidized student financial assistance programs,* and *unsubsidized student financial assistance programs.* Specifically, one commenter suggested that we use the term "Federal Methodology (FM) need analysis data" or "ISIR data" rather than *FAFSA information* to better reflect what institutions receive once the data reported on the FAFSA have been processed. In addition, one commenter stated that using the terms "subsidized" and "unsubsidized" to modify student financial assistance programs will confuse applicants because those terms are more commonly used when referring to loan programs. The commenter stated that families would better understand the type of aid we are referring to by using the terms "need-based student financial assistance programs" and "non-need-based student financial assistance programs."

Another commenter requested that the Department include in the regulations definitions for the terms "applicant" and "timely manner."

Discussion: While we appreciate the suggestions, we do not believe the suggested changes are necessary. We also do not agree that using the term "subsidized" and "unsubsidized" throughout subpart E will confuse applicants and their families about the type of aid we are referring to since these regulations are written for FAAs at institutions of higher education and not applicants and their families. An institution may, when communicating with students and families, use whatever terminology it believes will best be understood by its students and families.

However, we did make some revisions to the list of definitions under § 668.52. Specifically, we determined that the definitions for *Free Application for Federal Student Aid (FAFSA), Institutional Student Information Record (ISIR),* and *Student Aid Report (SAR)* would be more appropriately included in § 668.2(b) of subpart A because these terms are used throughout part 668 of the Student Assistance General Provisions regulations and not just under subpart E.

We also revised the definitions for *Valid Student Aid Report (valid SAR)* and *Valid Institutional Student Information Record (valid ISIR)* in § 668.2(b) to specify that a valid ISIR is an ISIR on which all the information reported on a student's FAFSA is accurate and complete as of the date the application is signed, and a valid SAR is a student aid report on which all of the information reported on a student's FAFSA is accurate and complete as of the date the application is signed.

In addition, we also changed the defined terms from *Student Aid Report (SAR)* to *Valid Student Aid Report (valid SAR)* and *Institutional Student Information Record (ISIR)* to *Valid Institutional Student Information Record (valid ISIR)* under §§ 668.54(b), 668.58, 668.59, and 668.61. Prior to these final regulations, an institution was not required to obtain a valid SAR or valid ISIR in order to make a disbursement under the campus-based programs and the title IV, HEA loan programs. Institutions could rely on their own calculations to determine an applicant's award amount without having to submit corrections through the Department's Central Processing System (CPS) and receiving the corrected SAR or ISIR. Consistent with the revisions to § 668.59(a), which require that any change to a nondollar item and any change to a dollar item on the FAFSA that is $25 or more must be submitted to the CPS for reprocessing, an institution must have a valid SAR or a valid ISIR to disburse funds from the subsidized student financial assistance programs. By definition, a valid SAR or valid ISIR can only be created after information has been processed through the Department's Central Processing System.

Finally, we also determined that we no longer need to define the terms valid SAR or valid ISIR under 34 CFR 690.2

of the Federal Pell Grant Program regulations as they are defined in part 668 because they apply to all of the title IV, HEA programs. For this reason, we have removed these definitions from this section.

Changes: The terms and corresponding definitions for *Free Application for Federal Student Aid (FAFSA), Institutional Student Information Record (ISIR),* and *Student Aid Report (SAR)* have been removed from § 668.52. Instead, we now define *Free Application for Federal Student Aid (FAFSA), Institutional Student Information Record (ISIR),* and *Student Aid Report (SAR)* under General definitions in § 668.2(b). We have also revised the definitions for *valid Institutional Student Information Record (valid ISIR)* and *valid Student Aid Report (valid SAR)* in § 668.2(b). We have removed the definitions for the terms *valid Student Aid Report (valid SAR)* and *valid Institutional Student Information Record (valid ISIR)* from 34 CFR 690.2(b) and revised the definition of these terms under § 668.2(b) to no longer refer to the definitions in 34 CFR 690.2(b) of the Federal Pell Grant Program regulations.

Comment: One commenter asked the Department to clarify the meaning of the term "applicant" as used throughout the verification regulations. The commenter suggested that the regulations should use the term "applicant" to refer to a student who is accepted for admission at an institution, rather than to a student who submits a FAFSA. The commenter argued that having "applicants" cover all students who submit a FAFSA would be administratively burdensome for institutions because it would require them to verify CPS-selected transactions for students who do not enroll at the institution.

Discussion: The term "applicant," as used throughout the verification regulations, refers to an individual who applies for assistance under the title IV, HEA program by completing and submitting a FAFSA.

While the term "applicant," as used in subpart E of part 668 covers individuals who may not enroll at the institution, we note that § 668.54 only requires an institution to verify the FAFSA information selected by the Secretary under § 668.56 and any FAFSA information the institution has reason to believe is inaccurate. Therefore, only those applicants who are enrolled at the institution and whose FAFSA information falls into one of these categories are subject to verification.

Changes: None.

Policies and Procedures—Professional Judgment (§ 668.53(c))

Comment: Many commenters expressed support for § 668.53(c), which requires an institution to complete verification prior to exercising the professional judgment authority allowed under section 479A of the HEA. These commenters indicated that this requirement, which is consistent with their policy to complete verification first, is important to ensure that the data reported on the FAFSA is accurate before making any adjustments to it.

Discussion: We appreciate the commenters' support.

Changes: None.

Comment: Some commenters questioned the process for completing verification prior to exercising professional judgment in special circumstances that require a dependency override in order to create a valid Student Aid Report (valid SAR) or valid Institutional Student Information Record (valid ISIR).

Discussion: The authority given to FAAs to exercise professional judgment under section 479A of the HEA is separate and apart from the authority given FAAs to make a dependency override decision under section 480(d)(1)(I) of the HEA. Section 479A of the HEA authorizes an FAA to make adjustments on a case-by-case basis to the cost of attendance or to the values of the data items used to calculate the EFC to allow for treatment of an individual eligible applicant with special circumstances as long as the adjustments are based on adequate documentation.

In the definition of "independent student" in section 480(d)(1)(I) of the HEA, an applicant may be considered to be an independent student if the FAA makes a documented determination that the applicant is independent by reason of other unusual circumstances.

In practice, an FAA would first determine whether an otherwise dependent applicant should be considered an independent student using the FAA's authority under section 480(d)(1) of the HEA, in order to obtain a valid SAR or valid ISIR, and then would subsequently make any corrections or professional judgment adjustments to the applicant's FAFSA information.

We will provide guidance in the Federal Student Aid Handbook to address operational details as needed.

Changes: None.

Comment: Several commenters expressed concern that requiring an institution to complete verification before exercising professional judgment would make it difficult for institutions to appropriately handle emergency situations. The commenters noted that delays would occur as a result of having to complete verification, submit any changes to CPS, and wait for the new SAR or ISIR upon which the professional judgment decision would be based. Some commenters suggested making modifications to systems software, *i.e.* FAA Access, to allow multiple changes to be made simultaneously to resolve this problem.

Discussion: We appreciate the commenters' suggestion for improving our operational process. We will take this suggestion into consideration as we look for ways to improve our services to institutions.

Currently, the CPS will process changes to an applicant's FAFSA information as a result of the verification process or a professional judgment determination and report the results on a new ISIR sent to the institution usually the next day. However the two transactions cannot be processed on the same day. This is because after the institution receives the ISIR that was created as a result of verification, the institution would use that ISIR transaction to make adjustments to the applicant's FAFSA information using the professional judgment process. While we understand the commenters' concerns about any delay that may occur with having to submit transactions separately, we believe that any delay will be slight. In addition, institutions have the option of making interim disbursements, as allowed under § 668.58, until a corrected valid SAR or valid ISIR is received.

Changes: None.

Comment: One commenter asked whether an applicant who is selected to verify the parent's household size, but who requests that the institution use its professional judgment authority under section 479A of the HEA to examine the parent's income listed on the FAFSA, would be required to verify all five items before the institution could exercise its professional judgment.

Another commenter argued that the requirement to complete verification before exercising professional judgment would delay the financial aid process and would create an additional hurdle for families in need. This commenter questioned why institutions have to go through an extra step to evaluate an applicant's eligibility through the verification process if the institution is updating those same fields when exercising professional judgment to revise an applicant's eligibility under section 479A of the HEA.

Discussion: Under these final regulations, an institution must verify the items selected for verification before making any professional judgment adjustments regardless of whether an institution is making adjustments to the item being verified. Prior to the effective date for subpart E of part 668 of these final regulations, for an application selected for verification, an institution must verify the data elements identified in current § 668.56 before making any adjustments regardless of whether an institution is making adjustments to the item being verified.

Changes: None.

Comment: One commenter asked whether an institution must complete verification prior to exercising professional judgment if the applicant's FAFSA information is selected for verification by the institution, rather than by the Secretary.

Discussion: To ensure that any professional judgment adjustments made by an institution are based on accurate information, we believe that all FAFSA information selected for verification, whether selected by the Secretary or the institution, must be verified before the institution can exercise professional judgment. We are making a change to § 668.53(c) to make this clearer.

Changes: We have revised § 668.53(c) by removing the phrase "by the Secretary" after the words "selected for verification" to provide that verification, regardless of whether the FAFSA information to be verified is selected by the Secretary or the institution, must be completed prior to exercising professional judgment.

Selection of FAFSA Information for Verification (§ 668.54)

Comment: Many commenters supported our proposal to target verification to those items reported on the FAFSA that are most prone to error, based on a set of criteria that identifies which items are most likely to contain erroneous data, instead of requiring verification of all five items listed in current § 668.56 for FAFSAs selected for verification.

Another commenter agreed with proposed § 668.54(b)(1)(iii), which excludes from verification applicants who only receive unsubsidized student financial assistance. This commenter stated that this approach would be more efficient for applicants and free up time for institutional staff to help other applicants.

Discussion: The Department appreciates the commenters' support.

Changes: None.

Comment: Many commenters opposed removing the institutional option to limit the total number of applicants who must be verified to 30 percent of all applicants. They argued that removing this limitation, which is reflected in current § 668.54(a)(2)(ii), would increase the workload of FAAs already struggling with reductions in staff and in State budgets, with a multitude of regulatory changes, and with increased enrollments. Some commenters noted that the Department currently targets Pell-eligible applicants for verification and were concerned that community colleges would be unduly impacted if the 30 percent limitation were removed. Commenters stated that more institutions may need to use the 30 percent limit to manage their workload due to the large increase in applicants applying to institutions with open enrollment. Many commenters expressed concern that the Department would significantly increase the number of applicants whose FAFSAs are selected for verification if a limit is not established in the regulations.

One commenter noted that additional study of the current verification process is needed to determine which corrections provide the most meaningful improvements in program integrity.

A commenter recommended that we retain the 30 percent limit for at least two years, during which time we can monitor whether the proposed approach of targeting information to be verified, as reflected in § 668.56, actually reduces an institution's burden. If, after this two-year period, we have evidence to show that burden on institutions has been reduced, the commenter suggested that the limit on the percentage of applicants whose FAFSAs must be verified should be lifted or modified.

Discussion: The Department reviews, studies, and analyzes verification data on an ongoing basis. Annually, the Department develops a comprehensive predictive model by applying sophisticated statistical techniques to FAFSA application data from the most recent application filing years along with corresponding payment data from those same years. The model is designed to identify the characteristics of FAFSA applications containing information that is likely to have errors which, if not corrected, will result in an improper payment of title IV, HEA program funds. The model contains a series of application groupings that identifies that application's statistical likelihood of error. The Department selects applications with the highest likelihood of significant error for verification.

We are confident that, when fully implemented, the targeted selection of FAFSA information to be verified will result in a more efficient and effective verification process. While some institutions, particularly those that enroll greater numbers of Pell Grant applicants, have more applicants whose FAFSA information is selected for verification, we believe that overall burden will be reduced across institutions. This is because for each applicant whose FAFSA information is selected, the items to be verified will be limited to specific items the Secretary has selected for that applicant (see proposed § 668.56(b)) rather than all five items listed in current § 668.56. For example, one applicant may be required to verify the five items required under the current regulations (because the Secretary includes them in the **Federal Register** notice published under § 668.56(a) and specifies that those items must be verified for that one applicant) while another applicant may only be required to verify adjusted gross income (AGI) and household size (because the Secretary includes these two items in the **Federal Register** notice published under § 668.56(a) and specifies that these are the only items that must be verified for this applicant). The Department also notes that it does not view the 30 percent limitation as applying to its own enforcement and monitoring activities, including program reviews and audits.

Changes: None.

Comment: Some commenters asked the Department to clarify how subpart E of part 668 will affect institutions that are currently allowed to establish their own verification criteria under the Quality Assurance (QA) Program.

Discussion: The changes made to the verification regulations in subpart E of part 668 will not diminish the importance of the QA Program. In fact, we are currently in the process of developing a plan to expand the number of institutions that participate in the QA Program. We are especially interested in increasing the participation of minority serving institutions, community colleges, proprietary institutions, and institutions that serve non-traditional students or that offer instruction in non-traditional ways. Also, the changes made to the verification regulations are not expected to alter the way the QA Program operates. In fact, the Department expects that data and results generated from institutions participating in the QA Program will help us assess the effectiveness of the new verification regulations in subpart E of part 668.

Changes: None.

Comment: Two commenters stated that the FAFSA information of

applicants who are incarcerated at the time verification would occur and applicants who are immigrants who recently arrived in the United States should not be subject to verification. One commenter noted that verification in these cases would require institutions to spend a significant amount of time explaining the Federal requirements to these applicants when their eligibility for aid may not be affected by the data gathered to complete verification. Another commenter stated that a dependent applicant whose parents are deceased or are physically incapacitated should also be excluded from verification.

Discussion: We do not agree with the commenters. Applicants who are incarcerated, recent immigrants to the United States, or whose parents are physically incapacitated, should be able to provide the documentation required to complete verification by providing their institution with the documentation that was used to complete the FAFSA.

An applicant whose parents are deceased would be independent and therefore there would be no verification of parental information on an independent student's FAFSA.

Changes: None.

Comment: Several commenters expressed concern that the new process for verifying different FAFSA items would cause difficulties because, after one instance of verification, there potentially would be other items that the applicant would need to verify during subsequent transactions (a "verification loop"). One commenter suggested that if the Department uses the targeted approach for verification, it should limit verification selection to one time per applicant and accept a subsequent correction for that targeted item as closure of the verification process for that application. One commenter noted that repeated verification does not currently occur because, under the current regulations, applicants are required to verify all items the first time. One commenter expressed concern that multiple verifications may occur for one student if the institution submits corrections to CPS and the student also initiates changes to the ISIR data. The commenter recommended including some protections for institutions that submit corrections to ISIR data. One commenter asked for guidance on what an institution is required to do when an applicant is selected for verification, completes it, is then selected for verification again but fails to complete the second verification process.

Discussion: As noted earlier, the Department has delayed implementation of the changes to subpart E of part 668, including §§ 668.54 and 668.56, which provide for the targeted approach to verification, until the 2012–13 award year. Therefore, for the 2011–12 award year, institutions will continue to verify, for all FAFSAs selected for verification by the Secretary, the five data items listed in current § 668.56. As we develop the selection criteria for determining which FAFSA information must be verified for an individual applicant (*i.e.,* selection criteria for determining which FAFSA information is prone to error), we will build into the system procedures that limit the possibility of any applicant being subject to additional FAFSA items needing verification after the first selection has been made. However if our analysis shows that, based on submissions of corrections, additional FAFSA information should be verified, perhaps because it is inconsistent with the "corrected information," an applicant may have to verify those additional items.

In the NPRM, we inadvertently omitted § 668.54(a)(4) from the verification regulations. Under current § 668.54(a)(4), if an applicant is selected for verification by the Secretary, the institution must require the applicant to verify the information as specified in § 668.56 on each additional application the applicant submits for the award year except for information already verified for the applicable award year. We are restoring § 668.54(a)(4) to provide that if an applicant is selected by the Secretary to verify his or her FAFSA information, the institution must require the applicant to verify the information in accordance with § 668.56 if the applicant is selected for a subsequent verification of FAFSA information, except that applicant is not required to provide documentation for that FAFSA information previously verified to the extent that the FAFSA information previously verified remains unchanged.

Under current regulations, an applicant who has completed verification once, whose FAFSA information is selected a second time for verification, is only required to verify FAFSA information not verified previously. When the revised § 668.54(a)(4) becomes effective, such an applicant would be required to complete the second verification process if the FAFSA information selected has changed for that award year. If the applicant fails to do so, he or she may forfeit eligibility for title IV aid in accordance with § 668.60(b).

Changes: We have revised § 668.54 by reinstating current § 668.54(a)(4) to provide that if an applicant is selected by the Secretary to verify his or her FAFSA information under § 668.54(a)(1), the institution must require the applicant to verify the information as specified in § 668.56 if the applicant is selected for a subsequent verification of FAFSA information, except that applicant is not required to provide documentation for the FAFSA information previously verified to the extent that the FAFSA information previously verified remains unchanged.

Comment: Some commenters suggested that the proposed verification requirements in subpart E of part 668 would increase barriers for the neediest students to apply for financial aid to pursue higher education.

Discussion: We do not agree. When this subpart is fully implemented in the 2012–13 award year, the verification process is expected to be more efficient and effective for both students and institutions. Thus, we do not expect that these new requirements will add a burden or increase barriers for students, including those from low-income backgrounds. We have not been presented with any evidence to support that these requirements will increase barriers for the neediest students to apply for financial aid to pursue higher education.

Changes: None.

Updating Information (§ 668.55)

Comment: While a few commenters supported the requirement in § 668.55(a)(1)(ii), which may result in making dependency status updates in mid-year, many stressed the difficulties that would arise as a result of this requirement. A primary concern expressed was that this requirement would result in a substantial increase in burden for institutions, particularly because a student's financial aid package is affected by the student's dependency status. One commenter claimed that to comply with this requirement, institutions would need to hire extra staff, which would not be possible in the current economy. In addition, some commenters noted that there would be undesirable consequences for the student: One who marries and becomes independent could lose eligibility for the Pell Grants already awarded and received because the spouse's financial data would be taken into account. Others stated that students might get married to increase their Pell eligibility or that divorce, rather than marriage, would decrease Pell eligibility; as one institution noted, many of its dependent students become eligible for more aid after they marry and become independent. Some

commenters requested that there be no change in this area or that FAAs be permitted to make dependency status changes under certain circumstances, such as during verification, or at their discretion. For example, one commenter suggested requiring the reporting of a change to dependency status until the first disbursement of title IV, HEA aid has been made and that if the dependency status update results in a change in the applicant's EFC, the lower value should be used. A couple of commenters observed that students who married late in the award year would become independent and need to have their aid repackaged for the award year. One commenter opposed all mid-year dependency status changes because they undermine the "snapshot" approach to the application process and create a large administrative burden. Another commenter noted the potential for students who divorced and became dependent again to lose eligibility for the aid they received because their parents would refuse to provide information for the application. Still another remarked that it is hard for institutions to track dependency status during the award year because accurate tracking requires that students notify the institution of changes. One commenter, who stated that he appreciated that when an update is due to a change in the student's marital status, institutions would only be required to make the update if notified by the student, also noted that this approach can penalize the student who is honest and reports the marital status change. This commenter argued that such a change in dependency status should be reflected in the application for the following year, as occurs under the current regulations. Another commenter suggested that although the Department affirmed that it is not the institution's responsibility to initiate updating, this view ignores the burden imposed on institutions to resolve conflicts in information they receive from different sources. This commenter requested relief for institutions so that they would only need to make a dependency status change in ISIR information if the student or family was the source of the information supporting the dependency change. Another commenter asked whether institutions are required to keep track of potential dependency status changes that are indicated by other campus offices when the student does not report the change. One commenter asked that there be a cut-off date after which an institution would no longer be required to make dependency status changes. Another commenter agreed with the Department's logic for not having a cut-off date, and asked that institutions be permitted to set their own date based on their academic calendar.

One commenter who supported mid-year dependency status changes requested that the Department allow updates to household size and number in college when there is a change in marital status. Another commenter asked for early implementation of § 668.55(c) because students are adversely affected by the current regulations.

Discussion: We agree that mid-year verification updates to household size and number in college and dependency status updates would be burdensome to institutions if they resulted from a change in a student's marital status. Accordingly, we have revised § 668.55(a) to provide that if an applicant's dependency status changes at any time during the award year, the applicant must update his or her FAFSA information, except when the dependency status change is due to a change in the applicant's marital status. Also, to reduce burden to institutions with regard to updating information, in § 668.55(b)(2), we specify that an applicant is not required to provide documentation of household size, number in college, or the financial data of an applicant's spouse during a subsequent verification of these data items if the information has not changed. However, new paragraph (c) of this section would allow the institution, at its discretion, to require an applicant to update the applicant's marital status, even if it results in a change in the applicant's dependency status, if the institution determines the update is necessary to address an inequity or to reflect more accurately the applicant's ability to pay.

In response to the comments about establishing cut-off dates for making updates, we note that under the revised provisions, an institution that decides to have marital status updated pursuant to § 668.55(c) may also incorporate in its policy a cut-off date after which it will not consider any updates to a student's marital status.

Changes: We have revised § 668.55(a) to provide that if any of the factors that impact an applicant's dependency status changes at any time during the award year, the applicant must update his or her FAFSA information, except if the item is the applicant's marital status.

Paragraph (b) of § 668.55 has been revised to provide that an applicant who is selected for verification of his or her household size or number in college must update those items to be correct as of the date of verification, except when the update is due to a change in the applicant's marital status. As revised, § 668.55(b)(2) also provides that an applicant is not required to provide documentation of household size or number in college during a subsequent verification for the same award year of either item if the information has not changed. Finally, paragraph (c) of § 668.55 provides that an institution may, at its discretion, update an applicant's marital status, even if the update will result in a change in the applicant's dependency status if the institution determines the update is necessary to address an inequity or to reflect more accurately the applicant's ability to pay.

Comment: One commenter asked whether, when a student's marital status is updated, the student must have his or her spouse's income reported to the CPS for recalculation of the student's EFC. Another commenter requested that the Department clarify how to treat income in cases when the student marries or divorces, regardless of whether verification was performed. A third commenter wondered why the household size and number in college items are updated while the income and assets items are not updated for new family members (*e.g.,* the stepparent of a dependent student or the spouse of an independent student).

Discussion: As we stated earlier in this preamble, we have revised § 668.55 to provide that there is no updating of an applicant's dependency status based on a change in marital status except at the discretion of an FAA. In such cases where an FAA chooses to update a student's dependency status as a result of a change in the student's marital status regardless of whether the student is being verified, all of the information must be consistent with the change to the marital status. This includes income (either adding the spouse's income or deducting a former spouse's income) as well as household size and number in college. Note, however, that the revised regulations do not allow for updating when an otherwise independent student marries or divorces, *i.e.,* there is no change in dependency status and the student is not selected for verification.

During verification, household size and number in college are updated, but the income and assets of new family members are not typically includable items on the FAFSA; for example, the income or assets of a grandparent who comes to live in the dependent student's family would not be includable. Moreover, section 475(f)(3) of the HEA excludes a stepparent's income and assets from being reported on the

FAFSA when a dependent student's parent remarries after the FAFSA was submitted, though we have stated for several years in the Application and Verification Guide that an institution may use professional judgment to include the stepparent's financial information.

Changes: As noted earlier in this discussion, we have revised § 668.55 to provide that applicants are not required to update their household size, number in college, and dependency status when the update is needed as a result of a change in the student's marital status, unless the institution chooses to update those items. When the institution determines that updates are required as a result of a change in a student's marital status, the student's FAFSA information needs to reflect the accurate household size, number in college, dependency status, and the spouse's financial information.

Comment: Some commenters questioned whether, when completing the FAFSA, students could project their marital status. One commenter argued that students should not be able to project marital status as they project household size based on unborn children.

Discussion: Because projected marital status is prone to error, applicants may not project their marital status when completing the FAFSA.

Changes: None.

Comment: A few commenters asked whether the student or the institution is responsible for updating information that impacts dependency status.

Discussion: Students and institutions both are able to update information that impacts an applicant's dependency status. Students can use FAFSA Corrections on the Web (COTW) or a paper SAR to submit updates. Institutions can use FAA Access to CPS Online or other Departmental electronic processes to submit updates on the student's behalf.

Changes: None.

Comment: One commenter asked us to clarify whether an institution must process a change in dependency status if a student is no longer enrolled at the institution.

Discussion: An institution is not required to process a change in an applicant's dependency status if the student does not enroll or is no longer enrolled at the institution. However, if the student subsequently enrolls or reenrolls for the award year, required updates must be made.

Changes: None.

Information To Be Verified (§ 668.56)

Comment: Several commenters expressed concern that even though the number of items to be verified under the new targeted approach reflected in § 668.56 will be reduced, the new approach will not alleviate the burden on the applicant or the institution because the institution must still identify and resolve discrepancies in the information the institution receives from different sources pursuant to § 668.16(f). For example, if a student were selected to verify AGI or untaxed IRA income, and the documentation for that is the tax return, the institution will need to check the other data on the tax return to ensure there are no conflicts with what was reported on the FAFSA. One of these commenters stated that it will continue to require full verification of all data items and to collect all documentation unless the applicant uses the IRS Data Retrieval Process. Another commenter suggested that relaxing the requirement to resolve discrepancies in information under § 668.16(f) would be a reasonable solution if the Department is using historical data that supports targeting specific data elements.

Discussion: Under § 668.16(f), an institution is required to resolve discrepancies in the information it receives from different sources with respect to a student's application for financial aid under the title IV, HEA programs. Therefore, conflicting information between the FAFSA information and other information at the institution must be resolved, and these regulations under subpart E do not change this. We have no reason to believe that the new approach to selecting items for verification will increase instances of conflicting information since any such conflicts would occur under the current regulations where every applicant selected for verification must verify information from a tax return.

Changes: None.

Comment: Some commenters disagreed with the proposed targeted approach to select items to be verified reflected in § 668.56 because they predicted that it would add to the burden of institutions. One commenter stated that having verifiable items different from the current five would require institutions to modify their automated correspondence and other processes. This would result in the use of more paper at a time when institutions are trying to reduce their carbon footprint.

Discussion: While a change in the number and type of verifiable items will require some work by financial aid offices, we believe that there should not necessarily be an increase in paper use and that once systems are automated, any additional administrative burden should be minimized. In fact, the use of the IRS Data Retrieval Process will reduce the amount of FAFSA information that institutions are required to verify and decrease the documentation an institution must collect and maintain. We believe the benefits to institutions and to students as a result of this process justify any extra work that institutions and students will experience in the short term.

As explained earlier in this preamble, we are delaying the effective date for the changes to subpart E of part 668 until July 1, 2012, the 2012–13 award year. This will allow more time for institutions to prepare.

Changes: None.

Comment: Various commenters observed that because the items for verification will be unpredictable, institutions will not be able to inform applicants and parents before receiving the ISIR what documentation will be required for verification. Commenters requested that the Department provide the expected date for publishing the set of verifiable items in the **Federal Register** in advance so that institutions have time to implement any changes in the items to be verified. Commenters requested advance notice as late as mid-December to as early as 5 or 6 months prior to the beginning of the application cycle each January. Commenters stated that institutions will have difficulties setting up complicated systems and training aid administrators and other staff to comply with the changes reflected in the new approach to verification, especially given limited resources on so many campuses. One commenter asked the Department to set a maximum number of items that can be selected for verification each year. Some commenters suggested having multi-year sets of verification items, rather than different ones each year, to expedite the verification process and to allow institutions time to plan. One commenter asked that each year the Department obtain public comment on the selection criteria the Department will use to select items for verification. One commenter asked how institutions would verify applicants' FAFSAs consistently for the overlap of two processing years. Another commenter asked that the new regulations be delayed until the IRS Data Retrieval Process is fully implemented, while another commenter asked for a safe harbor period during crossover periods when institutions can use the old

verification criteria, or adopt early the new criteria.

Discussion: While institutions will need to wait for the receipt of the ISIR before requesting specific verification documentation from applicants, we do not envision that this will substantially delay the time required for applicants to complete verification. During the early years of implementation of the targeted approach to verification, there will be stability in the FAFSA information the Secretary selects from year to year. For example, we would retain the five items included in the current regulations and supplement them as needed. However, it is unlikely that an applicant would have to verify all five data elements.

We will publish in the **Federal Register** the set of potential verification items the Department intends to verify for an upcoming award year four to six months prior to the start of the application processing year (January 1, 2012 for the 2012–13 award year) to give institutions time to modify their systems. The maximum number of items that could be selected for verification in any given year is the entire list of items we plan to publish in the **Federal Register** notice for that year. Because the selection of verification items for a particular award year will be based upon a sophisticated statistical analysis of prior year and other relevant data, we do not anticipate the **Federal Register** notice providing multi-year selection criteria, nor, for the same reason, do we intend to solicit public comments on the verification items we select.

To verify an applicant's FAFSA information that overlaps two processing years, the institution must determine which award year's EFC will be used and apply the verification criteria established for that award year.

Changes: None.

Comment: Various commenters expressed concern that the new approach for targeting items for verification will unfairly affect traditionally black, community, and career colleges. One commenter requested that we not use the verification process to target low-income demographic groups and that we consider some kind of relief for these groups regarding discrepancies in information under § 668.16(f). Another commenter questioned whether the new approach for targeting items for verification could be seen as a means of profiling applicants.

Discussion: Historically the Department has used verification to focus on those FAFSAs that are likely to include errors that will result in incorrect awards. It is not our intent to single out any demographic population or a particular type of institution; rather, our goal is to continue to select for verification FAFSA information that most likely needs to be corrected.

As stated earlier, § 668.16(f) requires an institution to resolve discrepancies in the information it receives from different sources and these regulations under subpart E will not change this requirement.

Changes: None.

Comment: One commenter asked if verification should be required when a student appeals for a professional judgment change to the cost of attendance.

Discussion: We do not plan to add to the list of verification exclusions in § 668.54(b) students who request a professional judgment change.

Changes: None.

Comment: Several commenters stated that an exclusion from verification could be granted when the student or parent used the IRS Data Retrieval Process to supply income and tax data on the FAFSA.

Discussion: Section 668.57(a)(2) of the new regulations codifies our determination that in instances when an applicant or parent is required to have his or her AGI, taxes paid, or income earned from work verified, the institution may consider as acceptable documentation the information reported by the student on the FAFSA and reported to the institution on the ISIR if the Secretary has identified those items as having come from the IRS and as having not been changed. The Secretary will so indicate by a flag on the ISIR that the information came directly from the IRS and was not changed. There will be separate flags for the student's information and, if applicable, for the parents' information.

Changes: None.

Comment: One commenter expressed concern that students will be confused and will miss the verification information on their SAR. The commenter stated that the verification worksheet will not work anymore because not all items will be used for each student and asked if institutions will need to develop their own interchangeable forms that will list only those items an applicant or parent must verify.

Discussion: Institutions have always been able and will continue to be able to develop and use their own verification worksheets as long as it captures the essential verification items. Institutions could create a single form with all the verification criteria for the coming award year and select for each student the pertinent items, or they could modify their form so that each student receives an individualized request for documentation. We will work with the community to determine if there still is a need for a Department-developed verification worksheet, and, if so, how it should be formatted.

Changes: None.

Comment: One organization requested that we create unique codes on the ISIR that correspond with each verification item so that institutions can automate their correspondence with applicants and other processes. Another commenter suggested that comments included on the SAR should be expanded to assist the applicant in sending the documentation to verify the specific items selected for verification to the institution he or she is seeking to attend.

Discussion: As suggested by the commenters, we will include on each applicant's ISIR item specific flags that will indicate which items need to be verified. We will also provide notification to the applicant on the Student Aid Report (SAR) of the need to have information verified.

Changes: None.

Comment: One commenter asked that the Department be responsible for completing verification and that the Department report to institutions when an applicant's aid can be disbursed.

Discussion: The commenter's request has been suggested before, and we have determined that most institutions are not interested in the Department performing verification and would, notwithstanding the workload, prefer to work with students directly.

Changes: None.

Acceptable Documentation (§ 668.57(a)(2), (a)(4)(ii)(A), (a)(5), (a)(7), and (d))

Comment: One commenter suggested that, for applicants and parents who have not filed their taxes prior to filling out the FAFSA and who indicate that they will be filing, the CPS should automatically draw down the IRS data and send a reprocessed ISIR, once the applicant files the required tax returns. A commenter noted that the IRS Data Retrieval Process would not benefit applicants and their families who complete the FAFSA (using estimated income) prior to completing their Federal income tax return in order to meet various State aid deadlines. One commenter asked whether data retrieved from the IRS can be used to make corrections to a FAFSA if the IRS Data Retrieval Process was not used to complete the original FAFSA. In this situation, the commenter asked whether the corrected data would be considered verified.

Discussion: Under our current agreement with the IRS, only the tax filer, at the time he or she is completing the FAFSA or, starting in 2011–12, at the time he or she is making corrections, can request that IRS tax information be displayed and only the tax filer can choose to have that information imported into the applicant's FAFSA for initial filings or into the CPS record for corrections. However, working with the IRS we have been able to mitigate (although not eliminate) the inherent calendar conflicts between the beginning of a FAFSA processing year in January, the many State and institutional deadlines occurring as early as February, and the IRS tax return filing timelines. Beginning with the 2011–12 processing year, the IRS plans to provide applicants and their families with FAFSA on the Web access to tax return information within approximately 10 days of the return's filing date if the return was filed electronically and within two weeks if a paper return was filed. Also, beginning with the 2011–12 FAFSA processing year, applicants and parents will be able to access IRS tax return information using the FAFSA COTW process. Thus, many applicants, who, because of their original FAFSA filing date (or for any reason), did not use the IRS Data Retrieval Process when they originally completed the FAFSA will be able to use the process to "correct" the original FAFSA information. Like applicants who use the IRS Data Retrieval Process when originally completing the FAFSA, if applicants and parents use the FAFSA COTW process to import IRS data on the FAFSA, the institution may consider that data as acceptable documentation in accordance with § 668.57(a)(2) if that data was not changed. As mentioned earlier, an applicant's ISIR will indicate that the information came directly from the IRS and was not changed.

Changes: None.

Comment: Several commenters supported the IRS Data Retrieval Process, which will allow applicants and their families to import data obtained from the IRS to populate an applicant's online FAFSA. Many commenters agreed that this process will reduce an institution's burden and help expedite the financial aid process by not requiring verification of IRS imported data; however, one commenter argued that it would be more appropriate to eliminate FAFSAs populated with IRS data through the IRS Data Retrieval Process entirely from verification.

Discussion: The Department appreciates the commenters' support. We do not agree that individuals who retrieve income and tax data from the IRS should be exempt from the verification process because not all FAFSA information can be imported from the IRS database and an applicant's FAFSA may be selected for verification as a result of a data item that cannot be retrieved from the IRS. However, as discussed earlier in this preamble, an institution may consider as acceptable documentation IRS retrieved information if the Secretary has identified those items as having come from the IRS and not having been changed. We are exploring a process that would automatically exclude from verification FAFSA items that came from the IRS and were not changed.

Changes: Section 668.57(a)(2) has been revised to clarify that an institution may use IRS transferred data as acceptable documentation for verification purposes if it is limited to the IRS data that was transferred for the specific award year, and the Secretary has identified the data as having been obtained from the IRS and not having been changed.

Comment: One commenter questioned whether applicants should be allowed to use data from the second processing tax year because that data may not accurately reflect a student's or parent's current income. The commenter asserted that the use of these data may cause confusion when completing the FAFSA and that this, in turn, will increase burden on institutions, which will be responsible for responding to increased requests for professional judgment reviews.

Another commenter pointed out that using data from the second processing tax year would not benefit some California Community Colleges that have a high population of families who have experienced job losses.

Discussion: Section 480(a) of the HEA gives the Secretary the option of using income and other data from the second preceding tax year to calculate an applicant's EFC. While the Department does not plan to exercise this option at this time, we believe it is appropriate to include this provision in the regulations to allow for this flexibility in the future.

We are revising § 668.57(a)(1)(i), (a)(1)(ii), (a)(1)(iii) to make conforming changes consistent with other paragraphs under this section that clarify the specific year that the documentation provided for under this section must be submitted to the institution.

Changes: Section 668.57 has been revised in paragraphs (a)(1)(i), (a)(1)(ii), (a)(1)(iii), and (a)(2) to add the phrase "for the specified year" as defined under § 668.52.

Comment: We received a number of comments expressing concern regarding the operational aspect of the IRS Data Retrieval Process. For instance, a few commenters were unclear if an applicant, whose marital status has changed since filing an income tax return, could use the IRS Data Retrieval Process to import only his or her data from an income tax return filed jointly. Another commenter asked if the appropriate fields from a married couple's separately filed tax return would be added together before the data are imported into an online FAFSA.

Discussion: For the reasons noted by the commenters, the IRS Data Retrieval Process has not and will not be offered to an applicant (or parent) whose marital status changed after the end of the tax year. Also, because the current configuration of the IRS Data Retrieval Process cannot access both tax returns when a married applicant or the married parents of a dependent student filed separately (IRS Filing Status of "Married Filing Separately), our FAFSA on the Web instructions advise such tax filers not to use the IRS Data Retrieval Process. Similarly the IRS Data Retrieval Process cannot extract the income of one individual that filed jointly. We are working with the IRS to find a resolution to this issue. In the meantime, if an institution is aware that such individuals did use the IRS Data Retrieval Process the institution must collect tax return information from the other spouse.

Changes: None.

Comment: One commenter noted that most Pell-eligible applicants would not benefit from the IRS Data Retrieval Process since they are not required to file a Federal tax return because they do not earn enough. Therefore, this commenter argued that these applicants and the institutions that serve them would not experience the reduction in burden the IRS Data Retrieval Process is expected to provide.

Discussion: The commenter is correct.

Changes: None.

Comment: One commenter requested guidance on the level of knowledge FAAs are expected to have regarding tax filing requirements. Specifically, the commenter expressed concern that FAAs may not have the knowledge necessary to ensure that applicants are filing their tax returns under the correct tax filing status (*i.e.,* single, married filing jointly, married filing separately, and head of household).

Discussion: We do not expect FAAs to be experts in IRS and tax filing requirements. However, FAAs are

expected to have a basic understanding of relevant tax issues that can considerably affect an applicant's eligibility. We expect FAAs to be able to ascertain whether an applicant or his or her family members identified on the applicant's FAFSA were required to file a tax return, what the correct filing status for the applicant should be, and that an individual cannot be claimed as an exemption by more than one person.

Changes: None.

Comment: One commenter asked for clarification on whether institutions have the authority to require an individual who is required to file a U.S. tax return but who has been granted a filing extension by the IRS to submit tax documents before proceeding with verification. Another commenter asked why the Department would not require the actual tax return filed with the IRS to be used to complete verification for a student or parent that files a tax extension. This commenter stated that a student should not receive any aid until verification is completed using the actual tax return (not the documentation provided under § 668.57(a)(4)(ii)). Another commenter supported the requirement that an applicant who is granted an extension to file his or her income tax return must submit a copy of the return that was filed, and the institution must re-verify the AGI and taxes paid by the applicant and his or her spouse or parents.

Discussion: Section 668.57(a)(4)(ii)(A) provides that an institution must accept a copy of IRS Form 4868, "Application for Automatic Extension of Time to File U.S. Individual Income Tax Return," that was filed with the IRS or a copy of the IRS's approval for an extension beyond the automatic six-month extension as acceptable documentation to verify an applicant's FAFSA information for an applicant that has been granted a tax filing extension. An institution may request a copy of the tax return once filed, but it may not delay verifying an applicant's FAFSA information until the tax return is received if the applicant provides the documentation approved by the Secretary under § 668.57.

The Department does not require an applicant that has been granted a tax extension to submit the actual tax return filed with the IRS because of the extended period of time that may elapse before the applicant actually files the return. This would delay the applicant's aid, which we believe would be inappropriate. We believe the income information collected on IRS Form 4868 and IRS Form W–2 should be sufficient documentation to verify the AGI, income earned from work, or U.S. taxes paid if those items are selected for verification. However, the regulations do provide that the institution may require the applicant to submit the actual tax return that was filed with the IRS. If the institution receives a copy of the return, it must reverify the AGI and taxes paid by the applicant and his or her spouse or parents.

We believe clarification is needed for the one commenter who appeared to interpret § 668.57(a)(5) to mean that in all cases applicants who are granted a tax extension must submit the actual tax return once it is filed, and that the institution must reverify the AGI and taxes paid by the applicant and his or her spouse or parents once it receives the filed return. An applicant who files an extension is only required to provide a copy of the tax return that was filed if the institution requires a copy. Only if the institution requires the applicant to submit the tax return that was filed would the institution be required to reverify the AGI and taxes paid by the applicant and his or her spouse or parents. This differs from what occurs under the current regulations. Under the current regulations, if an institution required an applicant who was granted a tax filing extension to submit the return to the institution once it was filed, the institution could decide whether or not to reverify the AGI and taxes paid by the applicant and his or her spouse or parents.

Changes: None.

Comment: None.

Discussion: We are making a technical change to § 668.57(a)(4)(iii)(B) to clarify that an individual who is self-employed or who has filed an income tax return with a foreign government must provide a signed statement that certifies the amount of taxes paid in addition to his or her AGI.

Changes: Section 668.57(a)(4)(iii)(B) has been revised to provide that an institution must accept a written certification of the amount of taxes paid for an individual who is self-employed or has filed an income tax return with a foreign government.

Comment: One commenter sought clarification on § 668.57(a)(7), which provides that an institution may accept in lieu of a copy of an income tax return signed by the filer of the return or one of the filers of a joint return, a copy of the filer's return that includes the preparer's Social Security Number, Employer Identification Number or the Preparer Tax Identification Number and has been signed by the preparer of the return or stamped with the name and address of the preparer of the return. The commenter asked whether it would be acceptable for the preparer to write or type his or her name on a filer's tax return. The commenter noted that guidance in the 2010–11 Application and Verification Guide is much broader, as it allows the preparer to stamp, type, sign, or print his or her name on a filer's tax return.

Discussion: We agree with the commenter and have revised § 668.57(a)(7) to expand the options a tax preparer has for being identified on an applicant's tax return to make it consistent with the guidance provided in the 2010–11 Application and Verification Guide.

Changes: We have revised § 668.57(a)(7) to provide that in addition to having the preparer's signature or stamp on a filer's tax return, the institution may accept a paper return on which the tax preparer has typed or printed his or her own name.

Interim Disbursements (§ 668.58(a)(3))

Comment: Some commenters supported § 668.58(a)(3), which allows an institution to make an interim disbursement prior to receiving the reprocessed SAR or ISIR if, after verification, the institution determines that changes to the applicant's information will not change the amount the applicant would receive under a title IV, HEA program and the requirement in § 668.59(a) that requires institutions to submit all corrections to the Department for reprocessing. One commenter did not support allowing an institution to disburse aid to a student before the student's corrected FAFSA information has been submitted and the institution receives a reprocessed SAR or ISIR.

Discussion: The Department appreciates the commenters' support and notes that interim disbursements are optional, not required.

Changes: None.

Comment: One commenter stated that because all corrections must be submitted to the Department under § 668.59(a), there is no need to allow interim disbursements. This commenter recommended that we remove from the regulations all provisions related to interim disbursements.

Discussion: We believe it is important to continue to give institutions the flexibility to determine whether to make interim disbursements to individual applicants prior to the completion of verification to alleviate a hardship a student may experience if there is a delay in receiving his or her financial aid. And, as noted earlier, interim disbursements are optional, not required.

Changes: None.

Comment: One commenter indicated that there is a problem with the cross-references in proposed § 668.58. The same commenter also expressed concern that this provision does not make clear how interim disbursements for the FWS Program are treated if the student after working is determined to have an overpayment.

Discussion: We agree with the commenter that there are problems with the cross-references for interim disbursements in proposed § 668.58. Specifically, we believe that in § 668.58(a)(1) and (a)(3)(i), we need to clarify that corrections to the student's FAFSA information must be made in accordance with § 668.59(a). In addition, in proposed § 668.58(b) we had an erroneous cross-reference for the interim disbursements made under the FWS Program. Proposed § 668.58(b) also did not cross-reference each type of interim disbursement that is allowed under certain conditions, either before verification is completed or after verification is completed but before the institution has received the valid SAR or valid ISIR reflecting the corrections. For clarity, we believe it is appropriate to revise § 668.58(b) so that it addresses each type of interim disbursement. Further, we believe that specific cross-references to § 668.61 need to be added to § 668.58(b) to clarify how institutions must handle any overpayments that occur because of an interim disbursement such as under the FWS Program.

Changes: We have revised § 668.58(a)(1) and (a)(3)(i) by clarifying that corrections to a student's FAFSA information must be made in accordance with § 668.59(a). In addition, we have revised § 668.58(b) to correctly and completely cross-reference each type of interim disbursement that is allowed. Further, we have revised § 668.58(b) to explain, with more specificity, how institutions must handle the recovery of each type of overpayment due to an interim disbursement, including those made for the FWS Program. We also added specific cross-references to § 668.61 in § 668.58(b) to provide clarity to institutions on handling the recovery of any overpayments that may occur because of an interim disbursement.

Consequences of a Change in an Applicant's FAFSA Information (§ 668.59)

Comment: A number of commenters agreed with the proposal to remove the $400 tolerance reflected in current § 668.59(a) and, instead, to require all changes to an applicant's FAFSA information be reported to the Department for reprocessing to ensure a student's award is based on accurate information.

Several other commenters objected to the proposal to remove the dollar tolerance because they believed it would increase administrative burden, particularly for larger institutions, and would delay payments to students. One commenter noted that the current tolerance allows FAAs to use their own judgment to determine when it was necessary to reprocess corrections that have minimal impact on student eligibility.

One commenter noted that removing the $400 tolerance will not be a problem for institutions but, like many other commenters, opposed requiring all changes to an applicant's FAFSA information to be submitted to the Department for reprocessing. The commenter expressed concern about this requirement, especially when the student's eligibility either would not be affected or where there were minor errors, *i.e.,* an AGI was off by $1. One commenter recommended that the Department consider providing institutions with some administrative relief in this area, given that institutions will need to implement several other changes as a result of the issuance of these verification regulations. Many commenters recommended that the Department retain the current $400 tolerance or allow for a reasonable tolerance of a modest sum to allow for minor errors made by applicants and their families.

Discussion: We appreciate the concerns raised by commenters and acknowledge the burden associated with having to submit all changes to an applicant's FAFSA information to the Department for reprocessing. While our goal is to obtain the most accurate data available to help in our efforts to identify error-prone applications, we agree that the regulations should provide a means for dealing with minor errors in financial information reported on an applicant's FAFSA information without requiring that these minor changes be submitted to the Department for reprocessing. While we do not agree that it is appropriate to retain the $400 tolerance from current § 668.59(a), we are revising § 668.59 to address minor errors in financial information so that institutions need not submit changes resulting from these types of errors to the Department for reprocessing. It is important to note, however, that institutions will still be required to submit all errors in nonfinancial information to the Department for reprocessing.

Specifically, we have revised § 668.59(a) to require institutions to submit, for reprocessing, any change to an individual data element on an applicant's FAFSA that is $25 or more. For example if the difference reported for AGI is $24, and taxes paid is $20, the institution would not be required to submit changes to the Department for reprocessing. However, if the difference for AGI is $25, and $20 for taxes paid, the institution would be required to update all changes, not just the change that exceeded the tolerance.

We also made conforming changes in § 668.164(g)(2)(i) to reflect that any dependent student, whose parent is applying for a Direct PLUS Loan must complete a FAFSA in accordance with section 483 of the HEA in order to obtain a SAR or ISIR with an official EFC to meet the conditions for a late disbursement.

In addition we have amended § 668.164(g)(4)(iv) to reflect the changes that were made under § 668.59(a) that require all changes to an applicant's FAFSA information be submitted to the CPS System for correction, except financial data that is less than $25. Therefore, an institution may not make a late disbursement of any title IV, HEA assistance until it obtains a valid SAR or valid ISIR.

Changes: We have revised § 668.59(a) to provide that if an applicant's FAFSA information changes as a result of verification, the applicant or the institution must submit to the Secretary any change to a nondollar item on the FAFSA and any change to a dollar item on the FAFSA if the change to that dollar item is $25 or more.

We have revised § 668.164(g)(2)(i) to require an applicant whose parent is applying for a Direct PLUS loan to have a SAR or ISIR with an official EFC to meet the conditions for a late disbursement.

We have also revised § 668.164(g)(4)(iv) to provide that an institution may not make a late disbursement of any title IV, HEA program assistance unless it receives a valid SAR or valid ISIR for the student by the deadline date established by the Secretary in a **Federal Register** notice.

Comment: One commenter stated that it is not opposed to requiring that institutions submit all corrections to CPS but expressed concern with the increased number of applicants selected for verification when there is a change to a school code or address.

Discussion: It is true that, in a limited number of instances, verification could be triggered when an applicant makes a correction to his or her address or to a school code. This is because the

statistical analysis that determines whether an applicant's record or a particular item should be verified due to the likelihood of error includes factors beyond those that are used to calculate the EFC. We do not believe that the number of these instances will be significant.

Changes: None.

Comment: One commenter indicated that the proposed regulations are confusing with respect to the handling of overpayments due to interim disbursements made after an applicant had been selected for verification, and the handling of overpayments due to disbursements made before an applicant was selected for verification.

Discussion: We agree with the commenter that proposed § 668.59(b), (c), and (d) may be confusing because these paragraphs do not clearly state how institutions must handle an overpayment that is the result of interim disbursements made after the applicant is selected for verification. Further, proposed § 668.59(b), (c), and (d) may also be confusing because these paragraphs do not clearly state how institutions must handle an overpayment that is the result of a disbursement that is made before the applicant is selected for verification but that is later discovered to be an overpayment. While proposed § 668.59(b), (c), and (d) was intended to describe how to handle an overpayment in both of these situations if the applicant is receiving aid under the subsidized student financial assistance programs, we believe that further changes are needed so that this section clearly states that an institution must comply with both the procedures in § 668.61 for an interim disbursement that is determined later to be an overpayment, and the appropriate overpayment requirements in the applicable program regulations for overpayments discovered during verification that were due to disbursements made prior to a student being selected for verification.

Changes: We have revised § 668.59(b), which covers the consequences of a change in an applicant's FAFSA information as the result of verification for the Federal Pell Grant Program, to provide that for purposes of the Federal Pell Grant Program the institution must follow the procedures in § 668.61 for handling overpayments due to interim disbursements, and the procedures in § 690.79 for overpayments that are not the result of interim disbursements.

We have also revised § 668.59(c), which covers the consequences of a change in an applicant's FAFSA information as the result of verification for the subsidized student financial assistance programs, excluding the Federal Pell Grant Program. Section 668.59(c) also covers the Direct Subsidized Loan Program that was handled originally in proposed § 668.59(d). As revised, § 668.59(c) now provides that the institution must follow the procedures in § 668.61 for handling overpayments due to interim disbursements, including for the FWS Program. Further, § 668.59(c) now provides that the institution must follow the procedures in § 673.5(f) for handling overpayments that are not the result of interim disbursements under the Federal Perkins Loan or FSEOG programs. Finally, we have revised § 668.59(c) to also provide that the institution must follow the procedures in § 685.303(e) for handling overpayments that are not the result of interim disbursements under the Direct Subsidized Loan Program.

The content in § 668.59(d) has been incorporated into paragraph § 668.59(c).

Deadlines for Submitting Documentation and the Consequences of Failing To Provide Documentation (§ 668.60(c)(1))

Comment: Two commenters concurred with the provision under proposed § 668.60(c)(1) that allows a student who completes verification while the student is no longer enrolled to be paid based on the valid SAR or valid ISIR. These commenters stated that this approach was preferable to current § 668.60(c)(1), which provides that the student is paid based on the higher of the two EFCs if the student submits a valid SAR or valid ISIR while the student is no longer enrolled. Under that approach, the student would receive the lesser amount of a Federal Pell Grant.

Discussion: We appreciate the commenters' support.

Changes: None.

Comment: One commenter encouraged the Department to allow institutions to implement § 668.60(c)(1) prior to the 2011–12 award year.

Discussion: While we appreciate the commenter's desire to implement this provision prior to the 2011–12 award year, we believe that allowing early implementation would interfere with policies already in place for the 2010–11 award year, and how that may impact aid already disbursed, *i.e.,* how to account for aid disbursed for a summer term that was assigned to the prior award year. As noted earlier in this preamble, the changes to subpart E of part 668, including § 668.60, will become effective on July 1, 2012, so that it will be implemented beginning with the 2012–13 award year and forward.

Changes: None.

Recovery of Funds (§ 668.61)

Comment: One commenter supported the proposed changes to § 668.61. Another commenter noted that § 668.61 should only address recovery of funds in the event of overpayments resulting from interim disbursements—not overpayments that are not the result of interim disbursements. This commenter indicated that this section also contains erroneous cross-references. In addition, this commenter stated that this section should provide information on how to treat overpayments made under the FWS Program as interim disbursements because the student must be paid for all hours worked.

Discussion: Section 668.61 is about handling the recovery of overpayments due to interim disbursements. The recovery of overpayments that are not the result of interim disbursements, including overpayments that result from disbursements made before an applicant was selected for verification and later after selection for verification the applicant's SAR and ISIR must be corrected, are addressed by the appropriate overpayment requirements in the applicable program regulations. We agree with the commenter that some of the cross-references in proposed § 668.61 need to be corrected.

We also agree with the commenter that it would be helpful for § 668.61 to provide details on how to handle the recovery of overpayments that occur from interim disbursements for students employed under the FWS Program. Under § 668.58(a)(2)(ii), an institution is allowed to employ an applicant under the FWS Program for the first 60 consecutive days after the student's enrollment in that award year prior to verification, if the institution does not have reason to believe that an applicant's FAFSA information is inaccurate. If an FWS overpayment occurs due to this interim disbursement, the institution must follow the procedures in § 668.61(b). We have revised § 668.61(b) to clarify that the institution must attempt to adjust the applicant's other financial aid to eliminate the overpayment due to an interim disbursement under the FWS Program. This revised § 668.61(b) provides that, if the institution is unable to eliminate the overpayment by adjusting the applicant's other financial aid, the institution must reimburse the FWS Program account by making restitution from its own funds. The applicant must still be paid for all work performed under the Federal labor laws.

Because the applicant was employed, the applicant must be placed on the institution's own payroll account and all required employer contributions for social security, workers' compensation, or any other welfare or insurance program, must still be paid by the institution because this applicant was an employee.

In addition, the institution is allowed under § 668.58(a)(3) to employ a student under the FWS Program for the first 60 consecutive days prior to receiving the corrected valid SAR or valid ISIR if, after verification, it determines that an applicant's information will not change the amount that the applicant would receive under that program. In § 668.61(c), we require that if an FWS overpayment occurs because the institution does not receive the valid SAR or valid ISIR reflecting corrections within the established deadline dates, the institution must reimburse the FWS Program account by making restitution from its own funds. In § 668.61(c), we clarify that the student must still be paid for all work performed under the institution's own payroll account and the institution must still handle all employer requirements.

Changes: We have revised § 668.61, including the section heading, to clarify that this section is about handling overpayments due to interim disbursements made under § 668.58. We have also corrected the cross-references in this section. In addition, we have revised § 668.61(b) to provide specific procedures for recovering funds from any FWS overpayment that results from an interim disbursement made before verification is completed. We have revised § 668.61(c) that describes the procedures for handling overpayments due to an allowable interim disbursement of subsidized student financial assistance, including any disbursement from FWS employment, before the institution receives the valid SAR or valid ISIR reflecting the corrections. Section 668.61(c) now makes it clear that the applicant must still be paid for all work performed under the institution's own payroll account.

Misrepresentation (Subpart F—§§ 668.71 Through 668.75)

General

Comment: A significant number of commenters generally or fundamentally supported the proposed regulations in subpart F of part 668. Several commenters stated that the proposed regulations on misrepresentation reflect an excellent, much-needed improvement over current regulatory language and that they will significantly enhance the Department's ability to address deceptive practices that compromise the ability of students to make informed choices about institutions and the expenditure of their resources on higher education. One commenter agreed, in particular, with proposed §§ 668.72 and 668.73, which ensure that all students have access and transparent information about their educational program and its cost. This commenter noted that accurate disclosures are needed in order to protect students, especially in light of the many documented instances in which students have had their expectations regarding postsecondary education outcomes (*e.g.*, completed degrees, good jobs and high salaries) not met with success but with failure and mountains of debt instead. One commenter stated that the proposed regulations on misrepresentation provide additional protections against misleading and overly aggressive advertising and marketing tactics. Another commenter strongly supported the proposals and stated that integrity in how institutions present themselves is key to ensuring students are not victims of false promises or misunderstanding when making a decision about higher education. Finally, we received many comments that supported the Department's mission of helping students make sound decisions and maintaining the integrity of the title IV, HEA programs but expressed concern about some of the specific language.

Discussion: We appreciate the commenters' support. We address the comments and concerns on specific language in the relevant sections that follow.

Changes: None.

Comment: Many commenters strenuously opposed the proposed revisions to the misrepresentation regulations in subpart F of part 668. Some commenters argued that, because misrepresentation is an issue more appropriately addressed by the Federal Trade Commission (FTC), the Department should have adopted in these regulations the language from the FTC guidelines so that those guidelines would be applicable to all institutions participating in the title IV, HEA programs. These commenters noted that for-profit institutions are already subject to the FTC guidelines and that the results of that guidance have served their students well and that other sectors of higher education should be subject to the FTC guidelines as well.

Several commenters stated that students would be confused by the proposed regulations dealing with misrepresentation. Specifically, the commenters expressed concern that because institutions disclose information to many parties, including accrediting agencies, the Department, current and prospective students, and the general public, information required to be disclosed under the title IV, HEA program regulations is complex and not always easy to understand. Therefore, the commenters argued that students will not be able to make informed decisions about which institution to attend because, under the title IV, HEA program regulations, they will be provided different statistics and will have difficulty understanding them.

One commenter expressed concern that while the education community is in need of clear guidance on ethical practices and the proposed regulations are well-intended, they are too vague and subjective. A few commenters urged the Department not to adopt the proposed regulations as final unless they are significantly clarified.

Finally, one group of commenters stated that the proposed changes to subpart F of part 668 are unfair to for-profit schools. Some commenters appeared to believe that the revisions reflected in proposed subpart F of part 668 would only apply to for-profit schools.

Discussion: During the negotiations that were held during the months of November 2009 through January 2010, we discussed whether to adopt the FTC guidelines in our misrepresentation regulations. Some non-Federal negotiators strongly opposed adopting the FTC guidelines in the Department's regulations because doing so, they argued, would be duplicative and heavy-handed.

The FTC only has jurisdiction over for-profit entities, and those entities are already subject to the FTC guidelines. The FTC guidelines do not apply to degree-granting institutions, and we believe it would not be appropriate to adopt the FTC guidelines wholesale. Instead, we have reviewed the guidelines carefully and incorporated only those that we determined are appropriate for inclusion in our regulations (*i.e.*, those that we believe should be applicable to all eligible institutions participating in the title IV, HEA programs).

With regard to the commenters who expressed concern for students being confused by these regulations, we note that the proposed regulations apply to institutions participating in the title IV, HEA programs and not to students. Because students are not the intended audience for these regulations, we do not believe that students will be

confused by the regulations. If students have questions about the regulations, they have a variety of sources to assist them in understanding them, including by contacting the Department with their questions.

We disagree with the commenters who opined that the proposed regulations are too vague and subjective. Section 487 of the HEA provides that institutions participating in the title IV, HEA programs shall not engage in substantial misrepresentation of the nature of the institution's educational program, its financial charges, or the employability of its graduates. The regulations in subpart F of part 668 set forth the types of activities that constitute misrepresentation by an institution and describe the actions that the Secretary may take if the Secretary determines that an institution has engaged in substantial misrepresentation. The proposed changes to the regulations strengthen the Department's regulatory enforcement authority against institutions that engage in substantial misrepresentation and clarify what constitutes misrepresentation.

The commenters who stated that the proposed regulations are unfair because they only apply to for-profit institutions are incorrect. Subpart F of part 668 applies to all institutions that participate in the title IV, HEA programs.

Changes: None.

Comment: Some commenters argued that the proposed regulations are legally deficient on their face, redundant, and provide no insight or guidance on conduct that may constitute "substantial misrepresentation." They stated that the proposed regulations do not contain any standards of intent, harm, or materiality. In addition, some commenters stated that the regulations are missing a quantitative element because they do not identify what exactly would trigger penalties (*e.g.*, a single complaint, a pattern of misrepresentation, a dollar amount of title IV, HEA aid). These commenters stated that a degree of materiality of misrepresentation should be taken into account when determining whether to impose a sanction on an institution.

Discussion: We disagree with the commenters who opined that the Department does not have the legal authority to regulate in this area. Current subpart F of part 668 has been in place for over 25 years. The proposed changes strengthen the Department's regulatory enforcement authority over institutions that engage in substantial misrepresentation and further clarify what constitutes misrepresentation.

The U.S. Government Accountability Office (GAO) was recently asked to conduct undercover testing to determine whether for-profit colleges' representatives engaged in fraudulent, deceptive, or otherwise questionable marketing practices. The undercover tests at 15 for-profit institutions found that four institutions encouraged fraudulent practices and that all 15 made deceptive or otherwise questionable statements to GAO's undercover applicants. Institutional personnel engaged in deceptive practices, including by encouraging applicants to falsify their FAFSA information, by exaggerating applicants' potential salary after graduation, and by failing to provide clear information about the institution's program duration, costs, and graduation rate. In some instances, the undercover applicants received accurate and helpful information from institutional personnel, such as not to borrow more money than necessary.

The information uncovered by the GAO during its investigation reinforces the Department's decision to amend the misrepresentation regulations in subpart F.

We disagree with commenters who claim the regulations are legally deficient because they fail to establish the need for specific intent as an element of misrepresentation or do not define a requisite degree of harm before the Department may initiate an enforcement action.

The Department has always possessed the legal authority to initiate a sanction under part 668, subpart G for any violation of the title IV, HEA program regulations. However, the Department has also always operated within a rule of reasonableness and has not pursued sanctions without evaluating the available evidence in extenuation and mitigation as well as in aggravation.

The Department intends to continue to properly consider the circumstance surrounding any misrepresentation before determining an appropriate response. Depending on the facts presented, an appropriate response could run the gamut from no action at all to termination of an institution's title IV, HEA eligibility depending upon all of the facts that are present.

We disagree with the commenters who stated that the proposed regulations are redundant. Although the FTC publishes guidelines for consumers to use to avoid deceptive advertising, promotional, marketing, and sales practices by vocational training providers, the FTC guidelines are considered administrative interpretations of the statutes that the FTC is charged with implementing as opposed to implementing the statutory requirement in section 487 of the HEA, which the Department is charged with implementing.

We disagree with the commenters who stated that the proposed regulations do not provide guidance on what constitutes "substantial misrepresentation." The proposed regulations define "substantial misrepresentation" as "any misrepresentation on which the person to whom it was made could reasonably be expected to rely, or has reasonably relied, to that person's detriment."

In determining whether an institution has engaged in substantial misrepresentation and whether to impose penalties, the Department uses a rule of reasonableness and considers various factors.

Changes: None.

Comment: Some commenters suggested that we adopt more concrete and narrowly defined terms in subpart F of part 668 to address abuses while protecting legitimate institutions and programs from baseless charges. These commenters stated that the proposed regulations on misrepresentation contain a number of vague and broad phrases that leave the door wide open for interpretation by States, accrediting agencies, and the Department. These commenters expressed concern that the lack of specificity in the regulations will fuel the potential for frivolous lawsuits brought as class actions against institutions. One commenter opined that the proposed regulations would function as a "perpetual employment act for lawyers" because, under the regulations, routine marketing claims would become a potential source of lawsuits and claims for years.

Some commenters also expressed concern about allegations of misrepresentation from disgruntled students and employees or former employees and as a result of journalists misreporting facts. These commenters argued that it is not appropriate for the actions of a single individual or a single incident, whether malicious or unintended in nature, to dramatically affect an institution.

Discussion: We disagree with the commenters who stated that the proposed regulations are too broad and open for interpretation. We proposed specific changes to the current regulations to clarify the types of false, erroneous, or misleading statements about an institution's educational program, the cost of the program, financial aid available, and the employability of its graduates that would be prohibited as

misrepresentations under subpart F of part 668.

We understand that some commenters have concerns about baseless charges and frivolous lawsuits that may be brought by students and employees including by dissatisfied students and disgruntled employees as well as fears that "routine marketing claims" would lead to lawsuits. We do not believe that the proposed regulations will increase litigation by students and employees against the institution. These regulations do not provide an additional avenue for litigation for students, employees and other members of the public. Instead, the regulations specify the conditions under which the Department may determine that an institution has engaged in substantial misrepresentation and the enforcement actions that the Department may choose to pursue. As the Department does in evaluating any regulatory violation, in determining whether an institution has engaged in substantial misrepresentation and the appropriate enforcement action to take, the Department will consider the magnitude of the violation and whether there was a single, isolated occurrence.

Changes: None.

Comment: Many commenters expressed concern that the proposed changes would eliminate due process protections for institutions in the case of substantial misrepresentation. The commenters requested that we retain the procedures from current § 668.75, arguing that the removal of these procedures conflicts with the HEA and exceeds the Department's statutory authority to regulate in this area.

Several commenters also expressed concern about the proposed removal of current § 668.75 because that section required the Department to review complaints and to dispose of them informally if the complaints were determined to be minor and could be readily corrected. The commenters argued that the proposed regulations would eliminate this sensible approach in exchange for using other procedures. These commenters recommended that we amend § 668.71(a) to include an option for the Department to allow an institution to correct minor, inadvertent, and readily correctable misrepresentations and to make appropriate restitution. They noted that these types of misrepresentations are bound to occur given the amount of information institutions must report and that simple human error should not constitute misrepresentation. Other commenters expressed concern that, under the proposed regulations, simple mistakes could trigger sanctions even if an institution has no history of misrepresentation problems.

Discussion: The Department is removing the provisions in § 668.75 because they are formulaic and have been proven unnecessary. The Departments takes its enforcement responsibilities seriously, and its history demonstrates that it does not overreact to single, isolated transgressions. We intend to enforce the misrepresentation regulations with the same degree of fairness that we enforce all other title IV, HEA program requirements. To the extent the Department chooses to initiate an action based upon a violation of the misrepresentation regulations, nothing in the proposed regulations diminishes the procedural rights that an institution otherwise possesses to respond to that action.

Changes: None.

Comment: Some commenters stated that enforcement by the Department is not necessary and is not the best way to allocate the Department's resources because State agencies, accrediting agencies and the FTC already enforce laws prohibiting misrepresentation. For example, some commenters noted that accrediting agencies have standards on institutional integrity and review the ways in which each institution represents itself as part of the accrediting process. The accrediting agencies perform regular reviews of all advertising and promotional material and publish specific guidelines for institutions regarding acceptable statements by staff. The commenters recommended that the Department continue to rely on this process, rather than adopting the proposed regulations, which they argue, will result in an unnecessary duplication of enforcement efforts. Another commenter asked us to clarify whether the Department—and not State authorizing agencies—is responsible for monitoring compliance with the misrepresentation regulations.

While a number of commenters argued that it is not appropriate for the Department to take enforcement actions to prevent misrepresentation, other commenters stated that in cases of true misrepresentation strong enforcement steps would go a long way in eliminating fraud and abuse and limiting the need for other measures to combat abuse that arises in the absence of such enforcement.

Discussion: We disagree with the commenters who stated that the Department should not be responsible for enforcement of these misrepresentation regulations because others, including State agencies, accrediting agencies, and the FTC are already enforcing laws against misrepresentation. The Department is responsible for ensuring that institutions participating in the title IV, HEA programs comply with section 487 of the HEA, which prohibits institutions from engaging in substantial misrepresentation of the nature of the institution's educational program, its financial charges, or the employability of its graduates. We acknowledge that other agencies and entities also enforce various laws and standards that guard against misrepresentation and are pleased that we have partners in ensuring that institutions do not make false, erroneous, or misleading statements to students, prospective students, and members of the public. We agree with the commenters who supported strong enforcement in this area. We believe that strengthening the misrepresentation regulations and enforcement of these regulations is critical to maintaining the integrity of the title IV, HEA programs.

Changes: None.

Comment: Many commenters argued that we should revise the regulations to link enforcement to situations in which the institution or its employees are making a conscious decision to mislead the consumer. The commenters suggested that the definition of misrepresentation be amended to include an element of intent to deceive; under this definition, institutions would face sanctions only if the Department determined that the misleading statement was made with the intent to deceive.

Discussion: In determining whether an institution has engaged in substantial misrepresentation and the appropriate sanctions to impose if substantial misrepresentation has occurred, the Department considers a variety of factors, including whether the misrepresentation was intentional or inadvertent.

Changes: None.

Comment: Some commenters expressed concern that they will be unable to comply with the misrepresentation regulations because they are required to comply with so many regulations that inadvertent misrepresentations are bound to occur.

Discussion: As previously discussed, before initiating any action, the Department carefully evaluates all of the circumstances surrounding an alleged misrepresentation. However, the Department rejects the notion that institutions are incapable of complying with multiple title IV, HEA program regulations, while at the same time ensuring that they do not make misrepresentations, inadvertent or otherwise.

Changes: None.

Comment: Some commenters expressed concern with the effect these proposed misrepresentation regulations could have on students. They argued that the regulations would conflict with State laws and create confusion in an area long regulated by the States. For example, given that students file complaints with the State, the commenters stated that an additional Federal remedy would be duplicative and would create uncertainty for students.

Other commenters expressed concern about institutions that require students to sign arbitration and confidentiality agreements as part of their enrollment contracts. These agreements serve to limit access to qualified legal counsel for students who may want to pursue a misrepresentation claim. Some commenters stated that the regulations should not be interpreted to create an express or implied private right of action against an institution for misrepresentation.

Discussion: We disagree with the commenters who stated that students will be confused by the misrepresentation regulations because they otherwise typically pursue claims of misrepresentation under State law. Nothing in the proposed regulations alters a student's ability to pursue claims of misrepresentation pursuant to State law and nothing in the proposed regulations creates a new Federal private right of action. The regulations are intended to make sure that institutions are on notice that the Department believes that misrepresentations constitute a serious violation of the institutions' fiduciary duty and that the Department will carefully and fairly evaluate claims of misrepresentation before determining an appropriate course of action.

Changes: None.

Scope and Special Definitions (§ 668.71)

Comment: Many commenters expressed concern about the expansion of the misrepresentation regulations to cover false or misleading statements made by representatives of the institution or any ineligible institution, organization or person with whom the institution has an agreement. The commenters believed that this change will result in holding institutions accountable for what is said, may be said, or inadvertently is said, by individuals or organizations that may have no official connection to an institution, and that institutions cannot monitor inadvertent and unofficial comments. Commenters argued that the proposals would expose good institutions to sanctions based on actions beyond their control. Many commenters sought clarification about which representatives of the institution are covered by the regulations. For example, commenters pointed to statements that may be made by students through the use of social media. One commenter suggested we modify the definition of misrepresentation to clarify that institutions are responsible for statements made by representatives or entities compensated by the institution. Another commenter recommended that we include only individuals under the direct control of the institution, including spokespersons and enrollment management companies.

We received another suggestion to limit covered agreements to those relating to marketing or admissions. Many commenters expressed concern that, without this change, the proposed regulations would apply to the hundreds of contracts a large institution may have with various vendors and service providers. They suggested that the institution only be responsible for communications from and statements by individuals or entities authorized to speak for the institution or who have representative authority to respond to the subject in question.

Commenters were particularly concerned about the penalties that could result from misinformation provided by an entity other than the institution. The commenters argued that the institution should not be subjected to undue penalties if the institution took steps to monitor and mitigate such possible misrepresentations, and in fact, took action upon identifying any incidences. For example, institutions provide information to companies that compile college rankings that are often derided as inaccurate, incomplete or false. Commenters believed that any penalties should be limited to statements related to the relationship between the institution and the entity.

Discussion: As noted elsewhere in this preamble, the Department enforces its regulations, including those in subpart F of part 668 within a rule of reasonableness. We strongly believe that the concerns voiced by many commenters have ignored this fact. We do not expect, for example, to find actionable violations in the comments made by students and routine vendors. However, the Department acknowledges that the language in § 668.71 may be unnecessarily broad. For this reason, we agree to limit the reach of the ban on making substantial misrepresentations to statements made by any ineligible institution, organization, or person with whom the eligible institution has an agreement to provide educational programs or those that provide marketing, advertising, recruiting, or admissions services. We have done this by narrowing the language in § 668.71(b) and the definition of the term *misrepresentation.* As a result, statements made by students through social media outlets would not be covered by these misrepresentation regulations. Also, statements made by entities that have agreements with the institution to provide services, such as food service, other than educational programs, marketing, advertising, recruiting, or admissions services would not be covered by these misrepresentation regulations.

Changes: We have revised § 668.71(b) and the definition of the term *misrepresentation* in § 668.71(c) to clarify that the ban on misrepresentations for which an institution is responsible only extends to false, erroneous, or misleading statements about the institution that are made by an ineligible institution, organization, or persons with whom the institution has an agreement to provide educational programs or to provide marketing, advertising, recruiting, or admissions services.

Comment: Some commenters noted a need for the regulations to clearly differentiate between "misrepresentation" and "substantial misrepresentation." Other commenters questioned how we will determine what constitutes "substantial misrepresentation." These commenters asked what the standards are for determining what constitutes harm, materiality, or intent to misrepresent. Another commenter suggested that we revise the definition of *substantial misrepresentation* to include misrepresentations that are disseminated—not only those that are "made".

Discussion: The Department is comfortable with its ability to make the distinction between a misrepresentation and a substantial misrepresentation. We believe that the regulatory definitions we are establishing are clear and can easily be used to evaluate alleged violations of the regulations. Moreover, as previously stated, we routinely evaluate the seriousness of title IV, HEA program violations before determining what, if any, action is appropriate. There is nothing in the proposed misrepresentation regulations that will alter the manner in which the Department reviews any violation of part 668, subpart F before deciding how it should respond.

Changes: None.

Comment: Some commenters supported the proposed definition of misrepresentation in § 668.71(c), which, as applied in these regulations, prohibits making false, erroneous, or misleading statements directly or indirectly to students, prospective students, or any member of the public, an accrediting agency, a State agency or the Secretary. They stated that these changes provide much needed updates to the current regulations and that the remedies give the Department needed flexibility. The commenters noted that the Department should not tolerate institutions that knowingly misrepresent facts and provide misinformation on purpose to students, their families and the public, and that we should hold institutions accountable that encourage students to enroll but fail to deliver on statements regarding accreditation and employability.

Other commenters expressed concern about broadening the list of entities to which an institution may not make a false, erroneous, or misleading statement to include accrediting agencies, State agencies or any member of the public. These commenters remarked that the effect of this regulatory change is that the list now includes anyone. The commenters argued that the determination of whether an institution has made misleading statements to an accrediting agency or State agency should be made by that agency, not the Department, and that the agency should take appropriate action. One commenter suggested that the list of entities should also include parents who may be signing or cosigning loans.

Discussion: The Department believes that in its stewardship of the title IV, HEA programs, it is essential to monitor the claims made by institutions not only to students and prospective students, but also those made to the Department's partners who help maintain the integrity of these programs. While it is likely that other oversight agencies will respond appropriately to any substantial misrepresentations that are made to them, only the Department has the overall responsibility for preserving the propriety of the administration of the title IV, HEA programs.

In addition, because parents are also members of the public, and most, if not all, statements made to them will also be made to students or prospective students, the Department does not believe that further enumeration to include parents is necessary.

Changes: None.

Comment: Some commenters noted that the term "misleading statement" is not defined by the FTC, and opined that, because the term's definition merely reiterates what has always been required for a finding of a substantial misrepresentation, it is unnecessary for the Department to define the term in its regulations. Some commenters suggested that, instead, the Department follow the FTC's practice of acknowledging that a finding of misrepresentation is a fact-specific inquiry based on a flexible standard.

Many commenters appeared to be particularly concerned about the use of the phrase "capacity, likelihood, or tendency to deceive or confuse" in the description of a "misleading statement". Some commenters stated that they do not believe that an enforceable or defensible basis for misrepresentation is created by including the likelihood of any form of communication to confuse or "have the capacity" to confuse a student or potential student. One commenter suggested we clarify that in order to constitute misrepresentation, the statement must have the "capacity or tendency" to deceive or confuse and be "likely" to deceive or confuse. The commenter cited examples of statements frequently made in marketing materials by institutions, such as "there is a place for everyone at XYZ." Other commenters noted that institutions provide information on a variety of complex issues that students and others may find confusing. In particular, certain terms of art such as "cost of attendance" and "graduation rate" may not be familiar to the general public and may be confusing to them. Another commenter requested that we clarify that a misrepresentation is not made if confusion results from the accurate reporting of disclosures required under various laws.

These commenters expressed concern that attempts to comply with recently promulgated regulations on college cost, transparency, and outcomes measures may result in confusion and lead to reported complaints of misrepresentation.

Several commenters argued that the Department needs to address the issue of misrepresentation through omissions of important information. One commenter suggested that we add language in the description of the term misleading statement to include an omission, if in the absence of an affirmative disclosure is likely to result in a person assuming something that is incorrect.

One commenter stated that oral statements should not be included in the definition of *misrepresentation.* The commenter questioned how the Department would know that an oral misleading statement was made.

Many commenters expressed concern that the proposed misrepresentation regulations will restrict their capability to use the Internet for fear of misrepresentation. These commenters noted that their top lead source is the Internet and that Internet marketing is the bloodline of all institutions. The commenters also pointed out that Internet marketing has issues relating to domain name ownership, name confusion, and pirating, and that, when the Department enforces these regulations, it needs to be careful in ensuring that it has the correct institution.

Discussion: The Department believes that it is appropriate to define the term misrepresentation in its regulations in order to distinguish misrepresentation from substantial misrepresentation. As discussed elsewhere in this preamble, the Department agrees that determining whether a misrepresentation has been made should be accomplished through a fact-specific inquiry and that enforcement actions should only be brought when reasonable.

With regard to the comments who stated that the "capacity, likelihood, or tendency to deceive or confuse" language will be confusing, we have no reason to believe that this language will have any such effect. Moreover, we do not believe that it is necessary to revise the regulations to state that a misleading statement must have both the capacity or tendency and likelihood to deceive because we believe that a statement that has any of the characteristics of the capacity, likelihood, or tendency to deceive or confuse is misleading.

By adopting these proposed regulations, the Department is not seeking to create extraneous bases upon which it can initiate enforcement actions. Rather, we want to ensure that the regulations help, rather than hinder, our ability to protect students, prospective students, and others from misleading statements made about an eligible institution, the nature of its educational program, its financial charges, or the employability of its graduates. The Department believes it can be trusted to properly evaluate whether a claim is confusing to a degree that it becomes actionable. It is also important to remember that it is only substantial misrepresentations that rise to the level where the Department may contemplate action.

As far as the failure of the proposed regulations to address affirmative omissions, the Department believes that the purpose of these regulations is to make sure that all statements an institution makes are truthful. Separately, the Department requires an

institution to make a number of disclosures to students and to the extent that any of these disclosures are inaccurate and constitute substantial misrepresentation, they are actionable. The Department believes that the totality of its regulations provides a sufficient basis to protect against the making of substantial misrepresentations without creating another category of misrepresentations that are more logically covered within the context of disclosures.

In addition, we disagree with the commenter who argued that oral statements should not be included in the definition of the term *misrepresentation.* We have seen and heard clear and unambiguous examples of oral statements that we view as misrepresentations in the GAO's video of its undercover testing.

With respect to the commenters who expressed concern about how these regulations may affect an institution's ability to use the Internet for marketing purposes, we note that it should not matter where a misrepresentation takes place. What is important is to curb the practice of misleading students regarding an eligible institution, including about the nature of its educational program, its financial charges, or the employability of its graduates. We strongly believe that institutions should be able to find a way to comply with these regulations when using the Internet for marketing.

Finally, we understand the many complexities of domain name ownership, trademark infringement and the like and will ensure that we are targeting the correct entities in any enforcement action we take under these regulations.

Changes: None.

Comment: Several commenters objected to including testimonials and endorsements in the definition of misrepresentation, because doing so holds institutions responsible for unsolicited testimonials or endorsements of any kind. The commenters noted that testimonials are widely used as the most relevant form of marketing. One commenter suggested that we modify the regulations to refer to testimonials that the institution "requested" a student to make "as part of the student's program" as opposed to "required" the student to make "to participate in a program." Another commenter believed we should expand the definition of the term *misrepresentation* to include endorsements or testimonials for which students are given incentives or rewards.

Discussion: The Department disagrees that changes to the definition of *misrepresentation* are needed. First, with respect to the commenters who stated that the definition is too broad, we note that the thrust of the definition is that the statement must be false, erroneous, or misleading. The inclusion within the definition of certain student endorsements or testimonials (*i.e.,* those that are given under duress or are required for participation in a program) establishes the circumstances under which endorsements or testimonials are necessarily considered to be false, erroneous, or misleading. We believe that including these types of endorsements and testimonials in the definition of misrepresentation is appropriate because endorsements or testimonials provided under these circumstances are suspect, at best.

Second, we do not believe it is necessary to expand the definition of misrepresentation to include endorsements or testimonials for which students are given incentives or rewards. We do not believe that an endorsement or testimonial for which a student was given a token reward such as a mug or t-shirt should automatically be considered false, erroneous, or misleading.

Changes: None.

Nature of Educational Program (§ 668.72)

Comment: One commenter supported the proposed changes to § 668.72 stating that the changes will reduce the motivation for institutions to use aggressive and misleading recruitment tactics to increase enrollment. The commenter noted that the requirements in this section align with their association's principles of good practice under which members represent and promote their schools, institutions or services by providing precise information about their academic major and degree programs.

Discussion: The Department appreciates this support.

Changes: None.

Comment: One commenter stated that § 668.72 was inherently unclear and asked for additional clarification without providing any specifics.

Discussion: The Department disagrees with this commenter and believes that the language in this section is clear. Moreover, because only false, erroneous, or misleading statements that constitute substantial misrepresentations are potentially actionable, institutions are on notice as to what they need to do to assure themselves of compliance.

Changes: None.

Comment: Some commenters recommended that we add language to this section to address specific concerns about clinical experience. One commenter argued that institutions should be required to inform students of any clinical experience the student needs to obtain a required license or certification, whether the institution or the student secures the appropriate clinical placement, and how the clinical experience relates to the ability to obtain employment. The commenter argued that the failure to inform a student of this information should constitute misrepresentation.

Discussion: We believe that the language in § 668.72 sufficiently covers false, erroneous, or misleading statements made by institutions concerning their educational programs. We further note that information such as that suggested by the commenter is more appropriately addressed in the student consumer information disclosures contained in subpart D of part 668 and note that institutions are required to disclose information about the academic program of the institution, which would include information about any required clinical experience.

Changes: None.

Comment: One commenter suggested that we add language to § 668.72 to specifically address misrepresentation related to whether course credits earned at the institution are transferable toward a substantially similar degree. This commenter noted that, in some cases, courses may be accepted but not count toward a degree at the new institution.

Discussion: We believe that the language in § 668.72(b)(1), which prohibits false, erroneous, or misleading statements about whether a student may transfer course credits earned at the institution to any other institution, is sufficient and provides more protection for students than the commenter's suggestion to limit the coverage to statements related to whether course credits are transferable toward a substantially similar degree.

Changes: None.

Comment: A few commenters suggested that we expand § 668.72(c)(2) to include "States in which the program is offered" rather than merely "the State in which the institution is located" so that the requirement reaches students who are enrolled through distance learning. One commenter noted that institutions that offer courses online should have additional responsibilities to students who take these courses. The commenter also asserted that these institutions should know and communicate to students what the State's requirements are to be employed

in that job and whether successful completion of the program will qualify them for such a job. Another commenter stated that an institution should know State licensing requirements in all the States in which it is providing the program and further opined that if the institution does not know the requirements, it could limit enrollment to students residing in the States in which it does know.

Discussion: The Department agrees with the commenters who believe institutions should be responsible for making statements that are not false, erroneous, or misleading in States in which the institution's educational programs are offered and not only in the State where the institution is located.

Changes: We have revised § 668.72(c) to prohibit false, erroneous, or misleading statements concerning whether completion of an educational program qualifies a student for licensure or employment in the States in which the educational program is offered.

Comment: One commenter suggested that we add "including the recognized occupations for which the program prepares students" at the end of § 668.72(g) to address the proposed requirements in § 668.6(b)(1) under which an institution must disclose on its Web site the occupations the program prepares students to enter and that we add a new paragraph to address misrepresentation about the kinds of disclosures that will be required under proposed § 668.6.

Discussion: We disagree with the commenter's suggestion to add language in § 668.72 to address the proposed regulations in § 668.6. The language in § 668.72(g) prohibits false, erroneous, or misleading statements concerning the availability, frequency, and appropriateness of its courses and programs to the employment objectives that it states its programs are designed to meet. We believe that this language is sufficient to guard against misrepresentation in the disclosures required under § 668.6. For additional information on those requirements, please see the section on *Gainful Employment (§ 668.6)* earlier in the preamble to these final regulations.

Changes: None.

Comment: Some commenters recommended that we add language to this section to address specific concerns about accreditation. One commenter suggested that the regulations be modified to require an institution to explicitly disclose a lack of specialized program or institutional accreditation if such accreditation is associated with the ability to apply to take or to take, the examination required for a local, State, or Federal license, or a non-governmental certification generally required as a precondition for employment or to perform certain functions in the State in which the institution is located. Some commenters suggested that misrepresentation related to requirements that are generally needed to be employed in the fields for which the training is provided be expanded to include withheld information. The commenters cited the testimony of Yasmine Issa who testified before the Senate Health, Education, Labor, and Pensions Committee on June 24, 2010. Ms. Issa testified that important information about the value of the educational credential she was pursuing and future employability was withheld. In particular, the program in which she was enrolled lacked specialized accreditation and, as a result, she was unable to sit for a licensing exam. The commenters argued that omission of important information should constitute misrepresentation if such omission is likely to lead someone to make incorrect assumptions as happened with Ms. Issa.

Discussion: The Department agrees with the commenters who requested that we expand these regulations to prohibit the withholding of information related to requirements that are generally needed to be employed in the fields for which the training is provided. To address circumstances such as the ones experienced by Ms. Issa, the Department has inserted the words "or requires specialized accreditation" in § 668.72(n). As amended, this provision now provides that misrepresentation concerning the nature of an eligible institution's educational program includes any failure by an eligible institution to disclose the fact that a degree has not been authorized by the appropriate State educational agency or that it requires specialized accreditation in any advertising or promotional materials that reference such degree.

Changes: We have revised § 668.72(n) to include a failure to disclose that the degree requires specialized accreditation as misrepresentation.

Employability of Graduates (§ 668.74)

Comment: Some commenters raised concerns about misrepresentation related to the institution's knowledge about the current or likely future employment conditions, compensation or opportunities in the occupation for which students are being prepared. Commenters argued that predictions about future employment or compensation should not be deemed misrepresentations unless such predictions are based on statements of fact which at the time they were made are objectively false or themselves misleading. The commenters requested confirmation that general statements of opinion about the benefits of enrolling in or completing a program would not be treated as misrepresentation about the future. Other commenters sought clarification that any information provided by an institution that is directly attributable to a State or the Federal government or any direct link to a governmental Web site such as the O*NET Web site would not be considered misrepresentation if the data and projections from the government or on the Web site are incorrect, confusing, or do not come true.

Discussion: As noted elsewhere in this preamble, the regulations in subpart F of part 668 only address false, erroneous, or misleading statements. Moreover, in enforcing this subpart, the Department intends to continue to carefully evaluate all of the surrounding circumstances before reaching any conclusions regarding the occurrence of a violation and the appropriate response. Predictions that are not based on false or misleading information, general statements and opinions, and information provided by State and Federal governments would not be the basis for a misrepresentation claim.

Changes: None.

Ability To Benefit (§ 668.32(e) and Subpart J)

Student Eligibility—General (§ 668.32(e))

Comment: Most commenters supported the Department's implementation of section 484(d)(4) of the HEA, which was added in 2008. This statutory change provided that a student shall be determined by an institution of higher education as having the ability to benefit from the education or training offered by the institution of higher education upon satisfactory completion of six credit hours, or the equivalent coursework that are applicable toward a degree or certificate offered by the institution. Several commenters expressed appreciation for the implementation of this new option of establishing an ability to benefit. Several of the commenters supported the equivalency of the six credit hours to six semester, six trimester, six quarter hours or 225 clock hours. One commenter expressly supported the continued individual institutional determination to accept any of the ability-to-benefit (ATB) options available in current § 668.32(e). One commenter recommended that the

Department monitor the application of this ATB option.

Discussion: We appreciate the support for these changes. With regard to the suggestion that the Department monitor the use of this eligibility option, we plan in 2011–2012 to implement a variety of changes to the data that institutions will provide to the Department that will help us determine when title IV, HEA program assistance is awarded to students who establish their title IV, HEA eligibility on the basis of either successfully completing six credit hours (or its equivalent) that are applicable toward a degree or certificate program offered at that institution, or when the student successfully passes an approved ATB test. We believe that this data will help us better understand the frequency that these options are employed and can lead to further study on the effectiveness of these alternatives to a high school diploma or its recognized equivalent.

Changes: None.

Comment: Some commenters offered conditional support for the regulatory change reflected in § 668.32(e)(5), but expressed some concerns. For example, one commenter expressed disagreement about the equivalency of six credit hours to six semester, six trimester, six quarter hours or 225 clock hours. In addition, several commenters did not agree with the application of 225 clock hours stating that this approach would not benefit students at clock hour institutions. Finally, a few commenters suggested that a conversion rate of 6 credit hours to 180 clock hours would be more reasonable.

Discussion: As discussed during the negotiated rulemaking sessions and in the preamble to the NPRM, the statute is silent on equivalency. The Department believes that it is a reasonable interpretation to use the successful completion of 6 semester, 6 trimester, 6 quarter or 225 clock hours for purposes of equivalency because these all would be equal to completion of one quarter of an academic year. For this reason, we are adopting as final the changes we proposed in § 668.32(e).

Changes: None.

Comment: A few commenters asked about the transferability of the successful completion of six credits (or its equivalent) among title IV, HEA eligible institutions. One commenter expressed concern that it appeared that the courses where the six credits were initially earned could not be college preparatory coursework, because they are not applicable to an eligible program. Therefore, the commenter argued, § 668.32(e)(5) would not benefit those students for whom ATB would be most helpful, students who may need preparatory coursework.

Discussion: Section 484(d)(4) of the HEA specifies that a student has the ability to benefit from the education or training offered by the institution of higher education if the student completes six credit hours or the equivalent coursework that are applicable toward a degree or certificate offered by the institution of higher education. When a student who earns six or more credits (or their equivalent) applicable toward a degree or certificate offered by that institution of higher education subsequently transfers to another institution, if those credits are applicable toward the degree or certificate offered by the subsequent institution, the previously-earned credits meet the requirements of section 484(d) of the HEA. However, we point out that the earning of credit hours based upon testing out is not comparable to taking and successfully completing six credit hours (or its equivalent) and, therefore, would not satisfy this ATB option.

If the courses that a student enrolls in are considered preparatory in nature, an institution must first determine whether these preparatory courses are a part of the student's program. To the extent that the preparatory courses are a part of the student's eligible program, the successful completion of six credits in these preparatory courses would meet this ATB standard. However, if the institution determines that these preparatory courses are not part of the eligible program, the successful completion of the six credits would not meet this ATB standard. It may be important to note that generally institutions develop their admissions policies in accordance with State licensing and accrediting requirements and, as a result, some institutional admissions requirements may require that all students have a high school diploma. In those situations, because all of the students would be required to have a high school diploma, the recognized equivalent of a high school diploma option and the ATB options in section 484(d) of the HEA would be inapplicable. However, for institutions that admit students either with the recognized equivalent of a high school diploma or under one of the optional ATB standards for students who do not have a high school diploma, those institutions cannot fail to accept, for title IV, HEA student eligibility purposes, the following—

- A student's passing of an approved ATB test;
- A determination that a student has the ability to benefit from the education or training in accordance with an approved State process;
- A student's successful completion of a secondary school education in a home school setting that is treated as a home school or private school under State law; or
- The satisfactory completion of six credit hours (or the equivalent coursework), that are applicable toward a degree or certificate at that institution.

As such, the new ATB option added in section 484(d)(4) of the HEA, and reflected in § 668.32(e)(5), is not the only opportunity for a student to establish that he or she has the ability to benefit from the education or training offered by the institution.

Changes: None.

Comment: One commenter expressed support for the inclusion of language in the preamble to the NPRM that indicated that the six credits or its equivalent used to establish ATB eligibility should be applicable to an eligible program offered at that school and suggested it should be included in the regulatory language. Another commenter expressed concern about the inclusion of this language in the preamble, opining that it went beyond the statutory language and intent. This commenter recommended that the Department consider removing such language in the final regulations.

Discussion: We recognize that the statute does not require that the coursework completed for purposes of this ATB option be applicable to an eligible program, but we remind institutions that this ATB option is designed to allow an otherwise ineligible student to obtain title IV, HEA program assistance while working to obtain a certificate or degree. Therefore, we expect that the coursework be applicable to an eligible program. We also acknowledge that students may change programs throughout their postsecondary career. For this reason, these regulations do not require that the student successfully complete six credits or their equivalent that are applicable to the specific degree or certificate program in which the student is enrolled. Instead, § 668.32(e)(5) requires only that the six credits be applicable to a degree or certificate program at the institution where the six credits are earned.

Changes: None.

Comment: Several commenters expressed opposition to the new § 668.32(e)(5). One commenter argued that the ATB options under current § 668.32(e)(2) and (e)(3) provide a better method of evaluating a student's ability to benefit and that the new option is not needed. One commenter stated that new

§ 668.32(e)(5) would cause greater financial hardship for students because it would require students to pay for these six credits without the benefit of title IV, HEA program assistance and that this, in turn, may lead to some students turning to high cost private financing. One commenter expressed disappointment that the Department did not seize the opportunity to fully re-evaluate the ATB regulations and make more broad and sweeping changes to the standards. Finally, some commenters expressed concern that § 668.32(e)(5) may penalize students who are very able to successfully perform class work and demonstrate learned skills, but who have difficulty taking tests and therefore may be unable to successfully complete the requisite six credit hours (or its equivalent), due to their inability to do well on written tests.

Discussion: Section 668.32(e)(5) incorporates the language from section 484(d)(4) of the HEA. The Department does not have the authority to not recognize this statutorily mandated ATB option. Moreover, we recognize that this new standard for establishing the ability to benefit for students who do not have a high school diploma or its recognized equivalent may not be appropriate for all students. However, we do not view this as a problem, because § 668.32(e)(5) supplements—rather than replaces—the current standards for establishing the ability to benefit under § 668.32(e)(2) and (e)(3).

Changes: None.

Comment: Most of the commenters who objected to § 668.32(e)(5) objected to this provision at least in part because the Department has stated that title IV, HEA funds may not be used to pay for any portion of the payment period in which those credits or equivalent were earned.

Discussion: The underlying student eligibility issue here is that a student without a high school diploma or its equivalent cannot be eligible for title IV, HEA program assistance, except under the four circumstances described in section 484(d) of the HEA. The payment period during which a student successfully earns the six credits (or its equivalent) under section 484(d)(4) of the HEA and § 668.32(e)(5) is a period when the student has yet to meet this statutory requirement or standard. We recognize that this inability to "go back" and establish eligibility may be fiscally problematic for some students or institutions, but we continue to believe that until a student's eligibility is established, the student is ineligible for title IV, HEA funds. That said, in cases where a student is enrolled in a program that has several modules within a payment period that are independently completed and graded prior to the end of that payment period, there could be a situation where a student successfully completes a module and earns six or more credits (or the equivalent) prior to the end of the payment period. In this scenario, an institution could make a determination of the cost of attendance for the remaining modules in the payment period, and award and disburse title IV, HEA funds for those remaining credits, based upon the limited cost of attendance in the payment period after the student has successfully completed the initial six credits.

Changes: None.

Comment: One commenter stated that he would encourage other institutions to establish admissions policies to prohibit the use of the earned credit ATB option reflected in § 668.32(e)(5) because of the unique complications created with this provision and State licensing boards. Specifically, the commenter expressed concern that students who do not complete the six credit hours (or their equivalent) under this option may not be able to obtain title IV, HEA program assistance to pay for their coursework.

Discussion: As noted earlier in this preamble, we recognize that the ATB option reflected in section 484(d)(4) of the HEA and § 668.32(e)(5) may not meet the needs of all students, or all institutions, and is simply one method by which a student can show that he or she has the ability to benefit from a degree or certificate program of study and, therefore, is eligible to receive title IV, HEA program assistance.

Changes: None.

Subpart J—Approval of Independently Administered Tests; Specification of Passing Score; Approval of State Process

Special Definitions (§ 668.142)

Comment: In response to the Department's request in the NPRM for feedback on the appropriateness of permitting specified test administrators in the assessment center to train other individuals at that assessment center to administer ATB tests, several commenters suggested that it would not be advisable or appropriate for senior test administrators in an assessment center to perform the required training of other individuals at the assessment center for the administration of approved ATB tests.

Discussion: The Department agrees that, consistent with the definition of the term *test administrator,* an individual must be certified by the test publisher or State, as applicable, to administer tests under subpart J of part 668 in accordance with the instructions provided by the test publisher or State. The only practical way for a test publisher or State to make a determination of whether an individual has the necessary training required in order to certify the individual as a test administrator is to provide the training that will insure that test administrators are cognizant of the test publisher's or State's written requirements. To emphasize and add clarity that the test administrator is required to be certified by the test publisher or State, as applicable, when a test is given at an assessment center by a test administrator who is an employee of the center, we have modified § 668.151(b)(1) by adding the word certified prior to the reference to test administrator.

Changes: We have amended § 668.151(b)(1) by adding the word "certified" prior to the reference to test administrator.

Comment: One commenter objected to the increased burden associated with the proposed requirement that test administrators at assessment centers be certified by the test publisher or State, as applicable.

Discussion: During the negotiations, the Department was told about the high incidence of staff turnover at assessment centers. One test publisher participating in the negotiations expressed concern that new staff have been trained to administer the approved ATB tests by other members of the assessment center staff and, as a result, were providing ATB tests without being properly certified by the test publisher or State. We agree that in order to meet the new definition of the term *test administrator* in § 668.142 and to meet the increased standards of training, knowledge, skills and integrity, that it is vital for all test administrators to be certified in order to administer an approved ATB test consistent with the requirements of subpart J of part 668 and the written instructions of the test provider. Moreover, we believe that the increase in burden falls mainly upon the test publisher or the State, rather than the institution.

Changes: None.

Comment: One commenter suggested that we clarify the definition of the term *independent test administrator* by modifying it to clarify that an independent test administrator cannot have any current or prior financial interest in the institution, but that he or she may earn fees for properly administering an approved ATB test at that institution. Another commenter suggested that the definition of the term

test administrator be expanded to include test proctors.

Discussion: Section 668.142, in pertinent part, defines an *independent test administrator* as a test administrator who administers tests at a location other than an assessment center and who has no current or prior financial or ownership interest in the institution, its affiliates, or its parent corporation, other than the fees earned for administering approved ATB tests through an agreement with the test publisher or State, and has no controlling interest in any other institution and has no controlling interest in any other institution. We agree that independent test administrators may obtain a fee for the administration of ATB tests generally through a written contract between the test publisher or State and the test administrator. In order to clarify this single type of allowable financial interest, we have made a change to the language in this definition.

On the matter of expanding the definition of the term *test administrator* to include test proctors, we disagree with this suggestion. The reason we disagree with the commenter's suggestion is that subpart J of part 668 specifically restricts the administration of ATB tests to test administrators certified by the test publisher or State to administer their tests, as defined in the agreement between the Secretary and the test publisher or State, as applicable. We believe it would be confusing to add test proctors to the definition of a test administrator because only certified test administrators can administer ATB tests for title IV, HEA program purposes. We believe certification is an appropriate requirement because it insures that the approved tests are administered by trained, skilled, and knowledgeable professions.

Changes: We have amended the definition of the term *independent test administrator* by clarifying that an independent test administrator must have no current or prior financial or ownership interest in the institution, its affiliates, or its parent corporation, other than the fees earned through the agreement an independent test administrator has with the test publisher or State to administer the test.

Application for Test Approval (§ 668.144)

Comment: One commenter strongly supported the proposed change in the language regarding the norming group in §§ 668.144(c)(11)(iv)(B) and 668.146(c)(4)(ii) that requires the group to be a contemporary sample that is representative of the population of persons who have earned a high school diploma in the United States.

Discussion: The statute provides that a student who does not have a high school diploma or its equivalent can become eligible for title IV, HEA program assistance if the student takes an independently administered examination and achieves the score specified by the Secretary that demonstrates that the student has the ability to benefit from the training being offered. As an alternative to obtaining a high school diploma, it is appropriate that the normative group used to establish the relative placement of the test-taker's results should be comprised of U.S. high school graduates rather than a group of persons who are beyond the usual age of compulsory school attendance in the United States. However, we take this opportunity to remind institutions that a fundamental component of the definition of the term *institution of higher education* requires that an eligible and participating institution may admit as regular students only persons who have a high school diploma (or have the recognized equivalent) or are beyond the age of compulsory school attendance. Therefore, it is clear that for the purpose of establishing title IV, HEA program eligibility, approved ATB tests may only be provided to students who are beyond the age of compulsory school attendance.

Changes: None.

Comment: Several commenters supported the proposal to include in the test publisher's or State's screening of potential test administrators, their evaluation of a test administrator's integrity. In response to our request in the NPRM for feedback about how a test publisher or a State will determine—in accordance with §§ 668.144(c)(16)(i) and 668.144(d)(7)(i)—that a test administrator has the integrity necessary to administer tests, we received a number of suggestions. These included the following—

- Requiring a prospective test administrator to sign, under penalty of perjury, an application indicating whether he or she had ever been convicted of fraud, breach of fiduciary responsibilities, or other illegal conduct involving title IV, HEA programs;
- Including a question on the test administrator's application asking whether the applicant has ever been convicted of a crime and, if the answer to this question is "yes", requiring the applicant to provide additional details;
- Including a question on the test administer application asking whether the applicant has ever worked at an institution of higher education, and if the answer to this question is "yes", requiring the applicant to provide additional details; and
- Requiring test publishers and States to perform fingerprinting and background checks, including a check for being included in any lawsuit, as well as, checking for arrests and convictions, for each test administer.

Discussion: We appreciate the commenters' suggestions regarding ways test publishers and States can evaluate whether a test administrator has the integrity necessary to administer ATB tests. While test publishers and States can adopt any of the methods proposed by the commenters, we do not believe it is appropriate to require all test publishers and States to use those methods to evaluate test administrator integrity. Rather, we believe § 668.144, as proposed, will provide test publishers and States with the flexibility they need to determine that the test administrator will have the necessary training, knowledge, skills and integrity to test students in accordance with subpart J of part 668 and the requirements of the test administration technical manual. Under § 668.144, test publishers and States are required to disclose how they will go about making these determinations. When evaluating the information provided by test publishers and States, we will be looking at their processes and to what extent information collected by the test publisher or State supports their determination of whether a prospective test administrator can demonstrate his or her training, knowledge, skills and integrity. In addition, we will compare the requirements in the test administration technical manual to the other provisions in § 668.144 that require test administrators to have both the ability and facilities to keep the ATB tests secure against disclosure or release and how those issues are explained to prospective test administrators, how any monitoring may be achieved to insure that the tests are being protected.

Changes: None.

Comment: One commenter recommended that test publishers and States should not be required to disclose any proprietary information, such as test anomaly analysis, to the Department due to the proprietary nature of the study techniques. The commenter stated that, if the Department decides that test publishers and States must provide their test anomaly study procedures, the Department should provide assurances that the information will be kept confidential.

Discussion: It is important that test publishers and States provide the

Department with their test anomaly analysis because the Department needs to understand the specific test anomaly analysis methodology employed by each test publisher or State, as applicable, to insure that they have established a robust process and procedures to identify potential test anomalies, methods to investigate test anomalies, due process in the investigation of these anomalies, as well as, the types of corrective action plans and the means of implementation of the corrective action plans, up to and including the decertification of test administrators. Because the Department agrees that test anomaly analyses may be proprietary, the Department will not release this information to the public and will otherwise treat the information as confidential.

Changes: None.

Comment: One commenter suggested that the Department define the term "test irregularities" and explain the distinction between test irregularities and test score irregularities.

Discussion: An ATB test irregularity occurs when the ATB test is administered in a manner that does not conform to the established rules for test administration. An ATB test score irregularity is one type of ATB test irregularity. For example, improper seating that would allow test-takers to be so close to one another that each test-taker could observe the test answer sheets or test answers on another test-taker's computer screen is an example of an ATB test score irregularity. We agree with the commenter that a clear understanding of proper test administration is needed to prevent test irregularities. For this reason, we have added a definition of the term *ATB test irregularity* to § 668.142. In addition, test publishers and States include instructions to the ATB test administrator in their test administration manuals. Section § 668.144(c)(12) requires test publishers to include in their applications the manual they provide to test administrators. We believe it is appropriate to also require States to include their test manuals in their applications. Accordingly, we have added a new § 668.144(d)(11) to require States to include, as part of its submission to the Secretary, the State's manual for test administration.

Additionally, we have determined that in proposed § 668.144(c)(10), regarding test-taking time determinations, our reference to § 668.146(b)(2) was imprecise. Section 668.146(b)(2) relates only to sampling the major content domains, not to sampling the major content domains with regard to test-taking time. Therefore, we have revised this paragraph to refer to § 668.146(b)(3), which includes as a requirement for test approval, the appropriate test-taking time to permit adequate sampling of the major content domains. We have also added a provision to specify that a test publisher may include with its application a description of the manner in which test-taking time was determined in relation to the other requirements in § 668.146(b) to provide the flexibility for test publishers to include a more comprehensive description of the way in which test-taking time was determined.

Changes: In § 668.142, we have defined an *ATB test irregularity* as an irregularity that results from an ATB test being administered in a manner that does not conform to the established rules for test administration consistent with the provisions of subpart J and the test administrator's manual. We also have added new § 668.144(d)(12) to include a requirement that a State, in its submission of an ATB test for approval, must include a manual provided to test administrators containing the procedures and instructions for test security and administration.

In § 668.144(c)(10), we have made a technical correction to specifically reference § 668.146(b)(3) rather than § 668.146(b)(2) and added a provision to specify that a test publisher may include with its application a description of the manner in which test-taking time was determined in relation to the other requirements in § 668.146(b).

Test Approval Procedures (§ 668.145)

Comment: One commenter requested that the Department provide examples of a substantial change that would cause the Department to revoke its approval consistent with proposed § 668.145(d)(1).

Discussion: Section 668.144 lists the components of an application that test publishers and States must submit for the Secretary's approval of an ATB test as an alternative to having a high school diploma or its recognized equivalent. The list of required items for submission includes a summary of the precise editions, forms, levels, and sub-tests for which approval is being sought. In addition, we require that a minimum of two or more secure, equated, alternate forms of the test must be submitted. Moreover, the regulations require that if a test is being submitted as a revision of a previously approved test, the test publisher or State, as applicable, must also submit an analysis of the revisions, including the reasons for the revisions, the implications of the revisions for the comparability of scores on the currently approved test to scores on the revised test, and the data from validity studies of the revised test undertaken subsequent to the revisions. Taken together, the regulations require the test publisher and the State to submit their tests, including all forms or editions of those tests, for approval. If the approved tests are revised, we have addressed how revised tests along with the supportive data must be submitted for approval under §§ 668.144(c)(9) and (d)(12).

Examples of substantive changes are (1) when a previously approved ATB test in a pencil and paper format is converted to a computerized test, and (2) when a previously approved ATB test in a pencil and paper format is converted to a voice recorded format. In each of these examples, the test publisher or State is required to submit the list of required submissions above.

An example of a non-substantive change is a correction of a typographical error. We will not require analysis of and submission for approval for non-substantive changes; however, it is important to note that if these changes are documented and shared with the Secretary, we would be able to address inquiries or comments from the public regarding these changes. Recognizing that we cannot provide an exhaustive list that would cover every situation, we encourage test developers to contact us if they have questions about changes to an approved test and whether the proposed changes would be considered substantive or non-substantive.

Changes: None.

Criteria for Approving Tests (§ 668.146)

Comment: One commenter noted that the 1985 American Psychological Association (APA) edition of the *Standards for Educational and Psychological Testing* (Standards) addressed test construction in terms of meeting "primary, secondary and conditional" standards. The commenter pointed out that the 1999 revised edition of the Standards no longer makes these distinctions and instead requires test developers and users to consider all the standards before operational use and does not continue the practice of designating levels of importance. As a result, the commenter suggested that we remove the reference to the words "meeting all primary and applicable conditional and secondary standards for test construction" in proposed in § 668.146(b)(6) because they are confusing. The commenter suggested—as an alternative—that we adopt language that the Department used in 34 CFR 462.13(c)(1) (*i.e.,* "The

test must meet all applicable and feasible standards for test construction and validity provided in the 1999 edition of the Standards for Educational and Psychological Testing").

Discussion: As discussed in the 1999 edition of the Standards, each standard should be considered to determine its applicability to the test being constructed. There may be reasons why a particular standard cannot be adopted; for example, if the test in question is relatively new, it may not be possible to have sufficient data for a complete analysis. As a result of the information in the 1999 edition of the Standards, we have made a change to the proposed language in § 668.146(b)(6) to reflect that tests must meet all applicable standards. However, we do not believe that we should include all "feasible" standards in the regulatory language. We believe that where a standard is not feasible, it would also not be applicable, as provided in the example, thus the inclusion of the word "feasible" is duplicative.

Changes: We have revised § 668.146(b)(6) by eliminating outdated references to primary, secondary and conditional standards to make the provision consistent with the language used in the most recent edition of the Standards.

Additional Criteria for the Approval of Certain Tests (§ 668.148)

Comment: One commenter indicated that their program of instruction is taught in Spanish to non-English speakers with an English as a Second Language (ESL) component. The commenter asked the Department for guidance for populations where there is no approved ATB test in the native language of the students.

Discussion: Under § 668.148, if a program is taught in a foreign language, a test in that foreign language would need to satisfy the conditions for approval under §§ 668.146 and 668.148. Absent an approved ATB test, students without a high school diploma or its equivalent could meet the alternative under proposed § 668.32(e)(5), whereby a student has been determined to have the ability to benefit from the education or training offered by the institution based upon the satisfactory completion of 6 semester hours, 6 quarter hours, or 225 clock hours that are applicable toward a degree or certificate offered by that institution where the hours were earned. If no test is reasonably available for students whose native language is not English and who are not fluent in English, institutions will no longer be able to use any test that has not been previously rejected for approval by the Secretary. We proposed this regulatory change because we recognized that, in the last 15 years, no ATB test in a foreign language has been submitted for approval. Therefore, under the current ATB regulations, any test in a foreign language became an approved ATB test regardless of whether it measured basic verbal and quantitative skills and general learned abilities, whether the passing scores related to the passing scores of other recent high school graduates, or whether these tests were developed in accordance with the APA standards. We believe that the removal of this overly broad exception from the current regulations will improve compliance and works in concert with the change reflected in § 668.32(e)(5), which allows for an exception where ability to benefit can be measured against a standard (the successful earning of six credits toward a degree or certificate program at that institution).

Changes: None.

Agreement Between the Secretary and a Test Publisher or a State (§ 668.150)

Comment: Under proposed § 668.150(b)(3)(ii), the agreement between the Secretary and a test publisher or a State requires that certified test administrators have the ability and facilities to keep ATB tests secure. One commenter stated that it does not favor storage of ATB tests anywhere other than at the institution. Another commenter offered to work with the Department and other test publishers to develop guidelines that will improve ATB test security.

Discussion: While ATB tests can be used for more than title IV, student eligibility determination purposes (such as for other assessment purposes), institutions, assessment center staff, as well as, independent test administrators will continue to have access to these tests. Given this reality, we acknowledge that securing tests and preventing test disclosure or release is difficult. We established the requirement in § 668.150(b)(3)(ii) in order to balance the need for legitimate access and security. We appreciate the commenter's offer to work with the Department and other test publishers to develop guidelines to improve test security.

Changes: None.

Comment: One commenter supported the requirement in proposed § 668.150(b)(3)(iii) that only allows test administrators to be certified when they have not been decertified within the last three years by any test publisher. This commenter inquired how, other than through self-reporting, a test publisher or State would have the information necessary to meet this requirement. The commenter also asked if we intend to develop, implement, and maintain a database of decertified test administrators.

Discussion: Under proposed § 668.144(c)(16) and (d)(7), a test publisher and a State, respectively, must describe its test administrator certification process. The Department plans to evaluate each of the test publisher's or State's certification plans to determine how they will obtain the information about test administrator decertifications by other test publishers or States. Under proposed § 668.150(b)(2), each test administrator will be required to provide to the publisher or State, as appropriate, a certification statement to indicate that the test administrator is not currently decertified and that the test administrator will notify the test publisher or State immediately if any other test publisher or State decertifies the test administrator. At this time, the Department does not plan to establish a list of all decertified test administrators.

Changes: None.

Comment: One commenter indicated that proposed § 668.150(b)(4), which provides that test administrators must be decertified under certain circumstances, will require States and test publishers to take great care when analyzing the facts prior to decertifying any test administrator. Section 668.150(b)(4) states that the agreement between the Secretary and a test publisher or a State must require the decertification of a test administrator who (a) Fails to administer the test in accordance with the test publisher's or State's requirements, (b) has not kept the test secure, (c) has compromised the integrity of the testing process, or (d) violated the test administration requirements in § 668.151.

One commenter also expressed concern that proposed § 668.150(b)(4) seems to remove the test publisher's or State's discretion about how to address certain violations of test administration rules. That commenter asked whether other corrective action is still a possible outcome, or whether decertification for any violation of the regulations or the test publisher's or State's test administration requirements is the only permissible outcome.

Discussion: We understand the comment regarding decertification of test administrators and that test publishers and States will need to take care when carrying out their obligations under these regulations. For example, we expect that a test publisher or State would provide an administrator an opportunity to respond to any finding

warranting decertification, including any finding based on inferences from the analysis required under § 668.151(b)(13). Regarding the inquiry whether § 668.151(b)(4) removes discretion and requires decertification without the possibility of other corrective action, we note that States and publishers are required to establish appropriate test instructions that ensure the integrity of the test and compliance with the requirements of the regulations. Having established the appropriate instructions, we do expect States and test publishers to decertify test administrators that fail to follow the test instructions or for any of the other reasons specified in § 668.151(b)(4). For example, we expect a test publisher or State to decertify a test administrator whenever it finds that a certified test administrator—

- Alters or falsifies answers or scores;
- Provides a test-taker with answers to the ATB test in order to improve the test-taker's score; or
- Allows a test-taker—other than a test-taker who is a person with a documented disability—extra time beyond the approved amount time as provided by the test publisher or State.

In situations where there is no evidence or basis to conclude that one or more of the four reasons specified in § 668.151(b)(4) has occurred, but there are other irregularities of another or lesser nature, we would expect test publishers and States to take the appropriate corrective action to protect the proper administration of its ATB test.

Changes: None.

Comment: Several commenters expressed concern about § 668.150(b)(5), which requires the test publisher or State to reevaluate the qualifications of a test administrator who has been decertified by another test publisher or State, even when the test publisher or State lacks any evidence of its own that the test administrator has performed in a manner inconsistent with the requirements in subpart J of part 668 or as required in the test administration manual.

Discussion: Under § 668.150(b)(2), a test administrator is required to certify that he or she is not currently decertified and, in the event he or she subsequently is decertified, that he or she will immediately notify all other test publishers and States who have provided their certification. To the extent that a test administrator, who is certified by test publishers A, B, and C, as well as States 1 and 2, is decertified by State 1, the test administrator is required to immediately notify the other testing organizations and make them aware that the test administrator has been decertified by State 1. Upon receipt of such notification, under § 668.150(b)(5), each of the other test publishers and the other State will reevaluate the qualifications of that test administrator. While the other testing organizations may not know the factual basis for the decertification by State 1, § 668.150(b)(5) requires the other testing organizations to examine this test administrator's work. Based upon the testing organization's analysis, additional professional scrutiny, and the facts as a result of their reevaluation, the other testing organizations must make a determination of whether to continue the test administrator's certification or to decertify the test administrator for cause. The fact that a test administrator has been decertified by one testing entity is sufficient cause to require that all other test publishers or States be alerted both to the fact that there was a problem of sufficient magnitude to require decertification by the other test publisher or State, and that they need to make an additional review and subsequent determination of whether testing problems could be occurring with the administration of their ATB test.

Changes: None.

Comment: One commenter recommended that we modify proposed § 668.150(b)(5) to provide that test publishers and States are not liable for damages in the event a test administrator is decertified wrongly. This commenter indicated that proposed § 668.150(b)(6), which requires that the test publisher or State notify the Secretary and institutions immediately after decertifying a test administrator, is overly broad and that test publishers and States should be able to end their relationship with a test administrator for any reason.

Discussion: We cannot indemnify test publishers or States for actions that a former employee may take against a test publisher or State. This is one of the reasons it is so important to strengthen these regulations including by requiring that, as a part of the test developer's (a test publisher or a State) submission, it describe in detail the test administrator certification process—specifically how the test developer will determine that the test administrator will have the training, knowledge, skills and integrity to administer the test consistent with the regulations and the requirements as established by the test publisher or the State. Because the current regulations already require the decertification of test administrators who fail to give the test in accordance with the test publisher's instructions, who fail to secure the tests, who compromise the test, or who violate the provisions of § 668.151 (Administration of tests), we do not anticipate that the changes to subpart J of part 668 reflected in these final regulations will cause an increase in legal actions brought by former test administrators. However, we do expect that these regulations will cause test publishers and States to strengthen their procedures and training to ensure that only properly trained test administrators will be certified by test publishers and States.

Notification of the Secretary and institutions when a test administrator is decertified is required for a variety of compliance and other issues. The Secretary needs to know to what extent a test publisher or State has a problem causing the decertification of test administrators. Recent GAO and OIG reports have reported a variety of compliance concerns around ATB testing. The Secretary has a responsibility to protect students, prospective students, institutions and taxpayers. Through these requirements, one new compliance metric will be the number of decertifications by test publishers or States, which the Secretary will monitor. Notification of any decertification by a test publisher or State to the institution is required due to the fact that institutions depend on the test publisher or State to provide certified test administrators and, therefore, are completely reliant upon test publishers and States to notify the institution of when a test administrator is no longer certified and must not be administering tests to students for title IV, HEA student eligibility determination purposes.

Changes: None.

Comment: One commenter suggested that when a test publisher or State suspends a test administrator while it conducts an investigation into a possible violation of its requirements or the regulations, the test publisher or State should not have to immediately report the suspension to the Secretary and the institution. The commenter also suggested that there should be a time limit after which notification by the test publisher or State to the Secretary and the institutions would not be required.

Discussion: Proposed § 668.150(b)(6) requires the immediate notification of the Secretary and all institutions where the test administrator administered tests upon decertification. We assume that in cases of suspected test administrator violations, a suspension period will occur while fact-finding, analysis, and ultimately a determination will be made to either continue the test

administrator's certification or to decertify the test administrator. The notification requirement reflected in § 668.150(b)(6) only applies immediately after a test administrator is decertified—not during the suspension period. Notification of the Secretary or others of a test administrator's suspended status is voluntary, but is an action that the Department supports.

The commenter suggested that this notification requirement be waived after a certain appropriate period of time. We do not agree. Consistent with the provisions of §§ 682.402(e) and 685.212(e), students may have their loan debt obligations discharged under a false certification discharge if the school certified the student's eligibility for a FFEL or a William D. Ford Federal Direct Loan on the basis of ability to benefit from its training and the student did not meet the applicable requirements of subpart J of part 668. Because these loans generally have a 10-year repayment schedule (and may have repayment plans under which repayment schedules can be extended to 25 or more years), we do not agree to limit the requirement to notify to the Secretary and institutions.

Changes: None.

Comment: One commenter strongly supported proposed § 668.150(b)(7), which requires that all test results administered by a test administrator who the test publisher or State decertifies be reviewed and that a determination be made about which tests were improperly administered. Upon a determination of which tests had been improperly administered, the test publisher or State must then immediately notify the affected institutions, affected students and affected prospective students. This commenter suggested that we revise this provision to require that the test publisher or State notify all students tested by the decertified test administrator.

Another commenter suggested that we add a time limit to § 668.150(b)(7)(i) so that test publishers and States that decertify a test administrator are only required to review tests administered by the decertified administrator during a specified period of time.

Discussion: Under proposed § 668.150(b)(7)(ii), when a determination of improper test administration is made, the test publisher or State must provide notification to all affected institutions and students or prospective students. Under § 668.150(b)(7)(iii), the test publisher or State must also provide a report to the Secretary on the results of the review of the decertified test administrator's previously administered tests that may have been improperly administered. When a determination is made that tests were improperly administered, the affected entities would include institutions, students, and prospective students affected by those tests that were improperly administered. Under § 668.150(b)(7), notifications to those affected entities are required. We believe that these notification and reporting requirements are adequate to inform all affected parties, including students and prospective students. We do not believe it is necessary to notify a student who took a test administered by a test administrator who was subsequently decertified when there is no evidence that the particular test the student took was improperly administered.

Under proposed § 668.150(b)(7), if a test administrator was certified over a long number of years, test publishers and States potentially would be required to review many years' worth of previously administered ATB tests because, as proposed, this regulatory requirement included no limit on how far back test publishers and States would need to go when reviewing tests previously administered by a decertified test administrator. We believe that the burden on test publishers and States associated with such an extensive review should be balanced against the significant student loan debt that students tested by the decertified test administrator may have incurred. For this reason, we are modifying the language in proposed § 668.150(b)(7)(i) to limit the period of the review to the five-year period prior the date of decertification. We believe that a five-year period is reasonable for the following reasons. First, we are decreasing the period of time for test publishers and States to conduct their test data anomaly studies from 3 years to 18 months. These studies, which are designed, in part, to analyze if there are ATB test irregularities, will be conducted more frequently and can be used to identify possible instances of improper test administration. Second, we believe that a longer review period will increase the likelihood that the student notification efforts of test publishers and States (in the event that their review reveals that previously administered tests were improperly administered) will be ineffective, in part, due to the low probability that the student address information that a test publisher or State obtains when the student takes the test will remain accurate over this period of the review. Finally, we strongly recommend that test publishers and States consider additional disclosures to students asking that they update their address information with test publishers and States over time, in order for test publishers and States to provide students and prospective students with potential future notifications that could reduce their future title IV, student loan indebtedness.

Changes: We have revised § 668.150(b)(7)(i) to indicate that the period of the review of all the test results of the tests administered by a decertified test administrator is 5 years preceding the date of decertification.

Comment: One commenter, who expressed support for the proposed change reflected in § 668.150(b)(13) decreasing the timeframe from 3 years to 18 months for test publishers and States to analyze ATB test scores to determine whether the test scores and data produce any irregular patterns, suggested that that the Department also consider a separate metric for test administrators who administer large numbers of ATB test within an 18 month period.

Discussion: We appreciate the recommendation and acknowledge that test publishers and States are free to adopt such a suggestion for test administrators who are providing large numbers of ATB test administrations in a short period of time. As some test publishers have pointed out, test publishers have everything to gain from ensuring that their ATB tests are properly administered in accordance with the regulations and their test administration manual. To the extent that there are high volume test administrators, test publishers and States can best protect their tests by developing processes to help them to determine early whether these high volume test administrators are in compliance.

Changes: None.

Comment: One commenter suggested that the Department consider a modification to the language in § 668.150(b)(13) to change the emphasis from an analysis of the test scores to an analysis of the test data.

Discussion: The purpose of proposed § 668.150(b)(13) (in concert with proposed §§ 668.144(c)(17) and (d)(8), which require test publishers and States, as applicable, to explain their methodology for identifying test irregularities) is to require test publishers and States to collect and analyze test data, to determine whether the test scores and data produce any irregular patterns that raise an inference that the tests were not being properly administered, and to provide the

Secretary with a copy of the test anomaly analysis. We acknowledge that this type of analysis is broader than just examining the test outcomes, *i.e.* the test scores. Because this type of item analysis, which can yield statistical irregularities, goes beyond test score results, we have modified the proposed language accordingly.

Changes: We have modified § 668.150(b)(13) so that it refers to "test data of students who take the test" and not to "test scores of students who take the test" to determine whether the test data (rather than "the test scores and data") produce any irregular pattern that raises an inference that the tests were not being properly administered.

Comment: One commenter suggested that the Department modify proposed § 668.150(b)(14) to require that any request for information by the Secretary or other listed agencies and entities be in writing.

Discussion: Nothing in the regulations would prevent the test publisher or State from asking the entities listed in § 668.150(b)(14) to request the information in writing, and from implementing other safeguards to protect the security and confidentiality of the data.

Changes: None.

Comment: One commenter stated that § 668.150(b)(16), as proposed, is ambiguous. The commenter suggested that we delete the word "other," as it modifies "criminal misconduct," from this section.

Discussion: Upon further review, we have determined that alternative language that specifically provides for both civil and criminal fraud would clarify what we mean in this regulatory provision. The purpose of § 668.150(b)(16) is to require test publishers and States to immediately report any credible information indicating that a test administrator or institution may have engaged in fraud or other criminal misconduct. We intend for test publishers and States to report suspected fraud or misconduct without requiring them to ascertain whether the conduct constitutes civil fraud, criminal fraud or "other criminal misconduct."

Changes: We have revised § 668.150(b)(16) to require that the agreement between a test publisher or a State, as applicable, and the Secretary must provide that the test publisher or the State, as applicable, must immediately contact the Office of the Inspector General of the Department of Education if the test publisher or the State finds any credible information indicating that a test administrator or institution has engaged in civil or criminal fraud or other misconduct.

Comment: One commenter expressed general support for proposed § 668.150(b)(17), which requires test administrators who provide an ATB test to an individual with a disability who requires an accommodation, to report to the test publisher or State both the disability and the accommodation. However, the commenter recommended that the Department provide clarification on how test publishers and States can exchange this information in a manner that would be compliant with the Health Insurance Portability and Accountability Act (HIPAA). Additionally, the commenter requested an explanation of the Department's position on distinguishing between an accommodation provided for an individual with a temporary impairment and an accommodation required by a person with a permanent or long-term disability.

Discussion: HIPAA is administered by the U.S. Department of Health and Human Services and the Department of Education does not provide guidance on how entities should comply with another agency's requirements. However, it is our expectation that test administrators, test publishers and States will implement the requirement reflected in § 668.150(b)(17) consistent with all other applicable Federal statutes and their implementing regulations.

With regard to the comment requesting an explanation of the Department's position on the differences between accommodations for test-takers with temporary impairments and accommodations for test-takers with permanent or long-term disabilities, we note that the regulations do not distinguish between types of accommodations. However, we acknowledge that test-takers may require accommodations for either temporary impairments or for individuals with disabilities.[1]

The following two examples are provided:

Example 1 (Temporary Impairment). If an approved ATB test is provided via paper and pencil and the test-taker, who is normally right-handed, has a broken right hand and, as a result, must write with his or her left hand, the test administrator must provide the test-taker an accommodation in accordance with the test publisher or State's technical manual for test administration. So, in this case, if the technical manual indicates that under a temporary impairment, such as, but not limited to, a broken writing hand, the test administrator should allow the test-taker an additional "X" minutes to complete the test, the test administrator must allow the test-taker with the broken writing hand an extra "X" minutes to complete the test.

Example 2 (Disability). If an approved ATB test is provided via paper and pencil and the test-taker is an individual with a disability, such as blindness. To the extent that the test publisher or State has addressed in the technical manual consistent with the requirements of § 668.144(c)(11)(vii) and provided additional guidance on the interpretation of scores resulting from any modifications of the test for individuals with disabilities, for example, the use of a previously approved audio recorded version would be permissible. In this example, there may or may not be scoring implications, however, an appropriate accommodation as provided in the technical manual is allowable as approved under this subpart.

Absent any instructions in the technical manual about accommodations for individuals with disabilities or individuals with temporary impairments, the test administrator does not have the authority to create or provide an accommodation other than what is provided in § 668.149. Historically, test publishers have addressed types of accommodations available to test administrators in their test administration technical manual, which the test publisher or State provides to the Secretary as part of its test submission. Once the test is approved by the Secretary, the accommodations indicated in the test administration technical manual are the approved accommodations for the test. In addition, subsequent to the Secretary's initial approval of an ATB test, some test publishers, consistent with the provisions of § 668.144(c)(9), have developed large-print versions, braille versions, and audio-recorded versions of their previously-approved tests and submitted the alternative versions along with the requisite analysis of the revisions for their comparability of scores to the previously approved test, as well as the data on the validity studies of the revised or alternative version of the previously approved test. Once approved, and as published in the **Federal Register**, these alternative versions of the previously approved test would provide for certain accommodations that may be required by individuals with disabilities.

[1] The use of the term "temporary impairments" for the purposes of these regulations should not be confused with the definition of disability as defined by these regulations (see § 668.142), section 504 of the Rehabilitation Act, or the Americans with Disabilities Act.

Changes: None.

Administration of Tests (§ 668.151)

Comment: One commenter provided a number of suggestions regarding test administration security, including requiring that (1) test publishers contact the Department when tests are being used for ATB and non-ATB purposes, (2) different versions of the test be used for different purposes so that one version is used exclusively for ATB purposes, (3) ATB tests only be shipped to test administrators and not to institutions, and (4) ATB tests be locked in an area that cannot be accessed by non-certified test administrators.

Discussion: Many ATB tests that have been submitted to the Secretary and subsequently approved for title IV, HEA student eligibility purposes are also used for general academic placement purposes not related to ATB. Regarding the suggestion that test administrators report to the Department when a test is used for ATB purposes, beginning with the 2011–2012 award year, we will begin collecting information on the use of an ATB test for each student who receives title IV, HEA funds; therefore test administrators will not have to provide the information to us. In terms of requiring that approved ATB tests must be used exclusively for this single purpose, that would require a statutory change. While it has been suggested that we revise the regulations to allow ATB tests only be shipped to test administrators and not to institutions, we believe that this is not feasible given that ATB tests are used both for title IV, HEA eligibility and non-title IV purposes, such as for course placement purposes. Finally, while it may be possible that at the discretion of the institution's assessment center (or as a result of an agreement between the test publisher or State and the institution) that ATB tests be locked in an area only accessible by certified test administrators, this may be impractical since these tests are used for non-title IV eligibility purposes.

Changes: None.

Comment: A commenter indicated that for computer-based tests, institutions maintain the associated system components on their computers, so test administrators (particularly independent test administrators) cannot be held responsible for maintaining the security of these types of tests, other than during the test administration.

For paper-and-pencil tests, the commenter expressed strong concerns regarding independent test administrators being held responsible for storing test materials. The commenter stated that independent test administrators often do not have access to secure storage, other than at the campuses where they administer the test. Use of their home or automobile for storage and transportation to test sites is clearly unacceptable for security. Institutions typically have a secure location (a locked facility to which only the test administrator and possibly a select few individuals have a key) where materials can be stored. In addition, many institutions use the same test forms for ATB purposes and other purposes, and thus would already have copies of the test forms in storage at the institution. The commenter argued that maintaining test forms at the institution while emphasizing the chain of custody, under written agreements, will better contribute to the goal of keeping test forms secure.

Discussion: We disagree. Proposed § 668.144(c)(16) and (d)(7) require test publishers and States, respectively, to ensure not only that the test administrator has the training, knowledge, skill and integrity to test students in accordance with the requirements of this subpart, and the requirements of the test administration technical manual, but also, that the test administrator has the ability and facilities to keep the ATB tests secure against disclosure or release. We believe that these requirements are reasonable, and prudent, and will help ensure the integrity of ATB tests. While at this time, we are not prescribing how test publishers or States must make these determinations about their test administrators, we expect that they will base their determinations on the measures taken by the test administrator to protect the security of the tests. For example, one could envision a test administrator satisfying this requirement by having a secure safe in the assessment center where only certified test administrators had the key or combination to obtain the tests. In the case of an independent test administrator, one could envision the test administrator satisfying the requirement by maintaining the tests in a mobile, portable safe or some other secure device. As these examples illustrate, test publishers and States will be required to distinguish between secure and non-secure methods of storing ATB tests that limit access and protect against unintended release or disclosure if these tests are going to continue to be used for ATB purposes, otherwise the Secretary will consider that the test is improperly administered.

Changes: None.

Administration of Tests for Individuals Whose Native Language Is Not English or for Individuals With Disabilities (§ 668.153)

Comment: One commenter noted that if a non-English speaking student is in a program of study which is taught in the student's native language and the program also has an ESL component or that at least a portion of the program will be taught in English, there are two aspects that need to be tested, the student's reading, verbal and quantitative skills in their own native language, as well as, their knowledge of English in order to understand the portion of the program taught in English. The commenter expressed concern regarding the timing of these tests.

Discussion: We appreciate this comment because it highlights the need to address a situation not covered by the proposed regulations. Under proposed § 668.153(a)(1), we require institutions to use an ATB test in the student's native language when the student's native language is other than English and the student will be enrolled in a program that is taught in the student's native language. Paragraphs (a)(2) and (a)(3) of proposed § 668.153 address situations where individuals who are not native speakers of English and who are not fluent in English are enrolled (or plan to enroll) in a program (a) that is taught in English with an ESL component and (b) that is taught in English without an ESL component, respectively. The proposed regulations do not address what happens in the case of a non-English speaker who is enrolled or plans on enrolling in a program that will be taught in his or her native language that includes an ESL component or a portion of the program will be taught in English. In situations such as these, we believe that institutions should require the student to take an English proficiency assessment approved under § 668.148(b) prior to when the English or ESL portion of the program commences.

Changes: We have added a new paragraph (a)(5) to § 668.153 to provide that if the individual is a non-native speaker of English who is enrolled or plans to enroll in a program that will be taught in his or her native language and the program includes an ESL component or a portion of the program will be taught in English, the individual must take a test approved under §§ 668.146 and 668.148(a)(1) in the student's native language. This new paragraph also provides that prior to the beginning of the ESL component or when the English portion of the program

commences, the individual must take an English proficiency test approved under § 668.148(b).

Comment: One commenter suggested that most test administrators do not have the training or experience to determine appropriate accommodations for students with disabilities, and thus are not qualified to identify or provide an appropriate accommodation. This commenter argued that test publishers and States should not be held accountable for training test administrators in the intricacies of laws regarding the rights of persons with disabilities. The commenter stated that, to protect the privacy of the examinee, the test administrator should not need to know the specifics of the disability. This commenter argued that the test administrator only needs to know what the accommodation is. For this reason, the commenter recommended that the test administrator only be required to verify that the institution has provided the appropriate documentation of the student's disability, as described in § 668.153(b)(4). It was the commenter's view that the responsibility for determining the appropriate accommodation for the student's disability lies with the institution's staff.

Discussion: We agree that test administrators may not have extensive training or experience to determine whether or not a requested accommodation is appropriate. However, each test must be administered in accordance with the test publisher's or State's technical manual. Consistent with proposed § 668.144(c)(11)(vii) and (d)(11)(vii), the technical manual must include additional guidance on the interpretation of scores resulting from any modifications of the test for individuals with disabilities. We expect that a test publisher or State will provide examples in the technical manual of the types of both allowable and non-allowable accommodations associated with a range of temporary impairments and for individuals with disabilities in order to insure that the test administrator has the necessary protocols to follow to ensure the validity of the test administration process, while allowing for a range of specialized needs to be met. While these examples of allowable and non-allowable accommodations cannot be exhaustive, we will expect them to be expansive so that test administrators have clear examples of how the approved tests can and cannot be used for individuals with temporary impairments and for individuals with disabilities. These protocols may include, for example, the use, when appropriate, of alternative tests (*e.g.*, approved audio-recorded ATB tests for individuals who are blind) and providing a test-taker whose vision is impaired (as documented by a physician) additional time to complete an approved large print version of an ATB test. To make this expectation clearer, we will revise § 668.144(c)(11)(vii) and (d)(11)(vii) to require a test's technical manual to include additional guidance on the types of accommodations that are allowable for individuals with temporary impairments or individuals with disabilities and the interpretation of scores resulting from any modifications of the test for individuals with temporary impairments or individuals with disabilities.

Changes: We have modified § 668.144(c)(11)(vii)and (d)(11)(vii) to require the test manual to include, in addition to guidance on the interpretation of scores resulting from modification of the test for individuals with temporary impairments or individuals with disabilities, guidance on the types of accommodations that are allowable.

Disbursements (§§ 668.164(i), 685.102(b), 685.301(e), 686.2(b), and 686.37(b))

Provisions for Books and Supplies (§ 668.164(i))

Comment: Several commenters agreed with the proposal in § 668.164(i) to require an institution to provide, under certain conditions, a way for a Federal Pell Grant eligible student to obtain or purchase required books and supplies by the seventh day of a payment period.

Various commenters noted the academic importance of enabling students to have early access to their books and supplies. However, some of these commenters argued that bookstore vouchers were not the most affordable option for students, noting that under current guidance an institution that issues vouchers in lieu of cash must demonstrate it provides students "a real and reasonable opportunity" to obtain materials from other vendors.

Two commenters requested that the regulations also apply to students who are eligible for the Iraq and Afghanistan Service Grants.

Various commenters believed the proposed regulations would be administratively difficult and burdensome to carry out. One of the commenters stated that institutions with nonterm programs would have special administrative problems meeting the proposed regulations because of different start dates and different payment period completion rates for students. Another commenter requested the Department to delay implementing the regulations so that institutions have sufficient time to make needed software and procedural changes. One commenter believed that the student should be required to initiate a request to obtain or purchase books and supplies instead of requiring an institution to perform this process for all Federal Pell Grant eligible students.

Discussion: Because we have identified situations where low-cost institutions delay disbursing funds for an extended time, or make partial disbursements to cover costs for only tuition and fees, the Department believes that these provisions are essential in enabling needy students to purchase books and supplies at the beginning of the term or enrollment period. Moreover, we find it troubling that disbursement delays at some institutions may force very needy students to take out private loans to pay for books and supplies that would otherwise be paid by Federal Pell Grant funds.

We believe that the regulations in § 668.164(i) provide an appropriate balance between the need for Federal Pell Grant eligible students to be able to purchase or obtain books and supplies early in the payment period and the administrative needs of institutions. For example, an institution may issue a bookstore voucher, make a cash disbursement, issue a stored-value card, or otherwise extend credit to students to make needed purchases. The institution has the flexibility to choose one or more of these methods or a similar method based on its administrative needs and constraints or an evaluation of the costs and benefits of implementing one or more of these methods.

With regard to the request to expand the scope of the regulations to include recipients of Iraq and Afghanistan Service Grants, we believe that students who are not eligible for a Federal Pell Grant should have sufficient resources, as indicated by their higher expected family contributions, to purchase books and supplies. We note however, that nothing in these regulations prevents an institution from making credit balance funds available early in the payment period to any student.

In response to concerns about administrative issues for nonterm programs, we note that for purposes of the Federal Pell Grant Program an institution is already responsible for knowing when a student has either completed a payment period or started a payment period. These regulations fall within that framework.

Concerning the request for a delay in implementing these regulations, we believe that an institution has ample time to make any administrative and software changes required since the regulations are not effective until the 2011–2012 award year.

Changes: None.

Comment: Some commenters questioned whether the anticipated credit balance for a student under the proposed regulations is calculated based only on Federal Pell Grant funds; all title IV, HEA program funds; or all financial aid funds.

In determining whether an institution could disburse title IV, HEA program funds to an eligible student 10 days before the beginning of a payment period, several commenters requested the Department to clarify how an institution treats a student who (1) Is selected for verification, (2) is subject to the 30 day delayed disbursement provisions for first-time, first-year undergraduate borrowers, (3) is attending a term-based program with minisessions, (4) has a "C" code on the SAR or ISIR, or (5) has other unresolved eligibility issues.

Some commenters requested that the regulations provide that an institution is only required to provide a student with the funds or bookstore vouchers for books and supplies after the student has attended at least one day of class.

One commenter noted that under Federal law a bank must have a customer identification program to help the government fight the funding of terrorism. Under that program, a bank must verify the identity of any person who opens an account and have procedures in place to resolve conflicting identity data. The commenter was concerned that for institutions using bank-issued stored-value cards or prepaid debit cards to deliver funds for books and supplies, any delays by the bank in resolving the conflicts would delay the delivery of funds to students. Consequently, the commenter requested that the regulations allow for this type of delay.

One commenter asked how the proposed regulations would apply under a consortium agreement between two eligible institutions if the student is enrolled in a course at the host institution with the class starting prior to the payment period at the home institution and the home institution is processing and paying the title IV, HEA program assistance. Another commenter asked what action would be required by an institution if it includes books and supplies in the tuition and provides all of those materials to the student when he or she starts class.

Discussion: With regard to which aid funds are used to determine whether a credit balance would be created 10 days before the beginning of a payment period, an institution must consider all the title IV, HEA program funds that a student is eligible to receive at that time. The institution does not have to consider aid from any other sources.

To be eligible, the student must meet all the eligibility requirements in subpart C of 34 CFR part 668 at least 10 days before the start of the student's payment period. A student who has not completed the verification process, has an unresolved "C" code on the SAR and ISIR, or has unresolved conflicting information is not covered by the regulations if those issues have not been resolved at least 10 days before the start of the student's payment period. With regard to the 30-day delayed disbursement provisions for Stafford Loans, the institution would not consider the amount of the loan disbursement in determining the credit balance because the institution may not disburse that loan 10 days before the start of that student's payment period. Also, the institution would not consider title IV, HEA program assistance that has not yet been awarded to a student at least 10 days before the start of classes because the student missed a financial aid deadline date.

The amount that the institution must provide to a qualifying student to obtain or purchase books and supplies is the lesser of the presumed credit balance or the amount needed by the student as determined by the institution. In determining the amount needed, an institution may use the actual costs of books and supplies or the allowance for those materials used in the student's cost of attendance for the payment period.

Since an institution has until the seventh day of a student's payment period to provide the way for the student to obtain or purchase the books and supplies, the institution may determine whether the student has attended classes if it has, or chooses to implement, a process for taking or monitoring attendance. However, by the seventh day of the payment period, that student must be able to obtain books and supplies unless the institution knows that the student is not attending.

When an institution uses a bank-issued stored-value or prepaid debit card that is supported by a federally insured bank account to deliver funds for books and supplies, a student must have access to the funds via the card by the seventh day of his or her payment period. If a bank delays issuing a stored-value or prepaid debit card to the student because it must resolve conflicting identity data under Federal law, the Department will not hold the institution accountable as long as the institution exercises reasonable care and diligence in providing in a timely manner any identity information about the student to the bank. Likewise, the institution is not responsible if the student provides inaccurate information or delays in responding to a request from the bank to resolve any discrepancies.

Under a consortium agreement between two eligible institutions, if a student is enrolled in a course at the host institution and classes start before the payment period begins at the home institution that is paying the title IV, HEA program assistance, the regulations require that the student obtain the books and supplies by the seventh day of the start of the payment period of the home institution. If the host institution is paying the title IV, HEA program assistance, the student must be able to obtain the books and supplies by the seventh day of the start of the payment period of the host institution.

An institution that includes the costs of books and supplies in the tuition charged and provides all of those materials to the student at the start of his or her classes meets the requirements of these regulations.

Changes: None.

Comment: Several commenters were concerned over who would be liable for advancing funds to a student for books and supplies if the student fails to start all of his or her classes. Some commenters indicated that the potential debt owed to an institution by students under the proposed regulations is not in the best interest of the student. A few commenters noted that the use of bookstore vouchers as the way for a student to obtain books and supplies appears to increase the amount of unearned title IV funds that the institution must return when a student withdraws.

Discussion: These regulations do not change the provisions under 34 CFR 668.21 concerning the treatment of title IV grant and loan funds if the recipient does not begin attendance at the institution. In the case where the institution has credited the student's account at the institution or disbursed directly to the student any Federal Pell Grant, FSEOG, Federal Perkins Loan, TEACH Grant, ACG, or National SMART Grant program funds and the student fails to begin attendance in a payment period, the institution must return all of those program funds to the respective program.

In addition, an institution must return any Direct Loan funds that were credited to the student's account at the institution for the payment period or period of enrollment. For any Direct Loan funds disbursed directly to a student, the institution must notify the Department of the loan funds that are outstanding, so that the Department can issue a 30-day demand letter to the student under 34 CFR 685.211. If the institution knew prior to disbursing any of the Direct Loan funds directly to the student that he or she would not begin attendance, the institution must also return those Direct Loan funds. This would apply when, for example, a student had previously notified the institution that he or she would not be attending or the institution had expelled the student before disbursing the Direct Loan directly to the student.

When an institution is responsible for returning title IV, HEA program funds for a student who failed to begin attendance at the institution it must return those funds as soon as possible, but no later than 30 days after the date that the institution becomes aware that the student will not or has not begun attendance. The funds that are required to be returned by the institution are not a student title IV, HEA liability and will not affect the student's title IV, HEA eligibility. However, institutional charges not paid by financial assistance are a student liability owed to the institution and subject to its own collection process.

The new requirement also does not change the regulations in 34 CFR 668.22 on handling the Return of Title IV Aid when a student began attendance but withdraws from the payment period or period of enrollment. If the institution provides a bookstore voucher for a student to obtain or purchase books and supplies, those expenses for the required course materials are considered institutional charges because the student does not have a real and reasonable opportunity to purchase the materials from any other place except the institution. The institution must include the charges for books and supplies from a bookstore voucher as institutional charges in determining the portion of unearned title IV, HEA program assistance that the institution is responsible for returning. However, an institution does not have to select the bookstore voucher as the way to meet the new requirement, it is just one option.

Changes: None.

Comment: One commenter opined that students who are not Pell Grant eligible would be unfairly responsible for obtaining funds to purchase books while others at the same institution would be confused about who should or should not receive the means to obtain or purchase books and supplies at the beginning of the term or enrollment period. A few commenters suggested or asked whether a student could opt out of the way offered by an institution to obtain or purchase books and supplies.

Some commenters asked if the proposed regulations were in conflict with the current Cash Management regulations in §§ 668.164 and 668.165. A few commenters requested clarification on how student authorizations applied to the new requirements. Some commenters suggested that an institution should not be required to obtain a student's authorization to credit his or her account at the institution with title IV, HEA program funds for books and supplies, while other commenters recommended that an institution should be able to require the student's authorization before advancing funds for books and supplies.

Discussion: Under § 668.16(h), an institution is required to provide adequate financial aid counseling to eligible students who apply for title IV, HEA program assistance and under § 668.42, an institution is required to provide consumer information to enrolled and prospective students that, among other things, describe the method by which aid is determined and disbursed, delivered, or applied to a student's account and the frequency of those disbursements. Further under § 668.165(a)(1), before an institution disburses title IV, HEA funds it must notify a student how and when those funds will be disbursed. Based on these requirements, an institution must describe in its financial aid information and its notifications provided to students receiving title IV, HEA funds the way under § 668.164(i) that it provides for Federal Pell Grant eligible students to obtain or purchase required books and supplies by the seventh day of a payment period under certain conditions. The information must indicate whether the institution would enter a charge on the student's account at the institution for books and supplies or pay funds to the student directly. Institutions also routinely counsel students about the variations in the amounts of Federal student aid or other resources that are available to them based upon their need and expected family contribution. We believe that this counseling process will mitigate any confusion by explaining to a student who qualifies for funds advanced to purchase books and supplies, how the process is handled at the institution, and how a student may opt-out of the process.

Regardless of the way an institution provides for a student to obtain books and supplies, the student may opt out. For instance, if an institution provides a bookstore voucher, the student may opt out by not using the voucher. If the institution uses another way, such as a bank-issued stored-value or prepaid debit card, it must have a policy under which the student may opt out. For example, a student might have to notify the institution by a certain date so that the institution does not unnecessarily issue a check to the student or transfer funds to the student's bank account. In any case, if the student opts out, the institution may, but is not required to, offer the student another way to purchase books and supplies so long as it does not otherwise delay providing funds to the student as a credit balance. We are amending the regulations to clarify that a student may opt out of the way that an institution provides for a student to obtain books and supplies.

In addition, to facilitate advancing funds or credit by the seventh day of classes of a payment period under this provision, the Department considers that a student authorizes the use of title IV, HEA funds at the time the student uses the method provided by the institution to purchase books and supplies. This means that an institution does not need to obtain a written authorization under §§ 668.164(d)(1)(iv) and 668.165(b) from the student to credit a student's account at the institution for the books and supplies that may be provided only under § 668.164(i). We are amending the regulations to indicate that an institution does not need to obtain a written authorization from a student to credit the student's account at the institution for books and supplies provided under § 668.164(i).

Changes: Section 668.164(i) has been revised to specify that an institution must have a policy under which a Federal Pell Grant eligible student may opt out of the way the institution provides for the student to purchase books and supplies by the seventh day of classes of a payment period. In addition, § 668.164(i) has been revised to specify that if the Federal Pell Grant eligible student uses the method provided by the institution to purchase books and supplies, the student is considered to have authorized the use of title IV, HEA funds and the institution does not need to obtain a written authorization under §§ 668.164(d)(1)(iv) and 668.165(b) for this purpose only.

Reporting Disbursements, Adjustments, and Cancellations (§§ 685.102(b), 685.301(e), 686.2(b), and 686.37(b))

Comment: A few commenters supported the proposed regulations to adopt the Federal Pell Grant reporting requirements for the TEACH Grant and Direct Loan programs and to add the Federal Pell Grant definition of the term *Payment Data* to the two other programs.

Discussion: We believe that harmonizing the reporting requirements for the Federal Pell Grant, TEACH Grant, and Direct Loan programs in accordance with procedures established by the Secretary through publication in the **Federal Register** will make it easier for institutions to administer the programs. In addition, this flexibility to adjust the reporting requirements for all three programs through publication in the **Federal Register** will enable the Secretary to make changes in the future that take advantage of new technology and improved business processes.

Changes: None.

Executive Order 12866

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether the regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the OMB. Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may (1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an "economically significant" rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order.

Pursuant to the terms of the Executive order, we have determined this proposed regulatory action will have an annual effect on the economy of more than $100 million. Therefore, this action is "economically significant" and subject to OMB review under section 3(f)(1) of Executive Order 12866. Notwithstanding this determination, we have assessed the potential costs and benefits—both quantitative and qualitative—of this regulatory action. The agency believes that the benefits justify the costs.

A detailed analysis, including the Department's Regulatory Flexibility Act certification, is found in Appendix A to these final regulations.

Paperwork Reduction Act of 1995

Sections 668.6, 668.8, 668.16, 668.22, 668.34, 668.43, 668.55, 668.56, 668.57, 668.59, 668.144, 668.150, 668.151, 668.152, and 668.164 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department has submitted a copy of these sections to OMB for its review.

Section 668.6—Gainful Employment

The final regulations will impose new requirements on certain programs that by law must, for purposes of the title IV, HEA programs, prepare students for gainful employment in a recognized occupation. For public and private nonprofit institutions, a program that does not lead to a degree will be subject to the eligibility requirement that the program lead to gainful employment in a recognized occupation, while a program leading to a degree, including a two-academic-year program fully transferrable to a baccalaureate degree, will not be subject to this eligibility requirement. For proprietary institutions, all eligible degree and non-degree programs will be required to lead to gainful employment in a recognized occupation, except for a liberal arts baccalaureate program under section 102(b)(1)(A)(ii) of the HEA.

An institution will be required under final § 668.6(a) to report for each student, who during an award year, began attending or completed a program under § 668.8(c)(3) or (d), information that includes, at a minimum, information needed to identify the student and the location of the institution the student attended, the CIP code of the program, the date the student completed the program, the amounts the student received from private educational loans and the amount from institutional financing plans that the student owes the institution after completing the program, and whether the student matriculated to a higher credentialed program at the institution or another institution. We estimate that it will take the affected 1,950 proprietary institutions, on average, 12 hours to develop the processes necessary to implement the requirements in § 668.6(a) for students who, during the award year, began attending or completed a program under § 668.6(c)(3) or (d). These processes include ones to record student identifier information, to record the CIP codes associated with these programs, to record completion dates, to determine and record the amounts the student received from private educational loans and the amount from institutional financing plans that the student owes the institution after completing the program, and to record data on students who matriculate to higher credentialed programs at the same or at another institution. Therefore, burden will increase for these affected proprietary institutions by 23,400 hours.

We estimate that it will take the affected 1,736 private not-for-profit institutions, on average, 12 hours to develop the processes necessary to implement the requirements in § 668.6(a) for students who, during the award year, began attending or completed a program under § 668.6. These processes include ones to record student identifier information, to record the CIP codes associated with these programs, to record completion dates, to determine and record the amounts the student received from private educational loans and the amount from institutional financing plans that the student owes the institution after completing the program, and to record data on students who matriculate to higher credentialed programs at the same or at another institution. Therefore, burden will increase for these affected private not-for-profit institutions by 20,832 hours.

We estimate that it will take the affected 1,915 public institutions, on average, 12 hours to develop the processes necessary to implement the requirements in § 668.6(a) for students who, during the award year, began attending or completed a program under § 668.6. These processes include ones to record student identifier information, to record the CIP codes associated with these programs, to record completion dates, to determine and record the amounts the student received from private educational loans and the amount from institutional financing plans that the student owes the institution after completing the program, and to record data on students who matriculate to higher credentialed programs at the same or at another institution. Therefore, burden will increase for these affected public institutions by 22,980 hours. Collectively, we estimate that burden for institutions to meet these process development requirements in accordance with procedures established by the Secretary will increase burden by

67,212 hours in OMB Control Number 1845–NEW1.

We estimate that annually there will be 3,499,998 students who will begin attendance in occupational programs that train students for gainful employment in a recognized occupation. We estimate that 1,996,593 of the 3,499,998 students will attend a proprietary institution. Therefore, with regard to proprietary institutions, the total number of affected students is estimated to be 5,989,779 students (1,996,593 times 3) for the initial reporting period that will cover the 2006–2007 award year, the 2007–2008 award year and the 2008–2009 award year. We estimate that the reporting of student identifier information, the location of the institution the student attended, and the CIP codes for each beginning student (*i.e.,* a student who during the award year began attending a program under § 668.8(c)(3) or (d)) will average .03 hours (2 minutes) per student or 179,693 hours of increased burden.

We estimate that 161,308 of the 3,499,998 students will attend a private not-for-profit institution. Therefore, with regard to not-for-profit institutions, the total number of affected students is estimated to be 483,924 students (161,308 times 3) for the initial reporting period that will cover the 2006–2007 award year, the 2007–2008 award year and the 2008–2009 award year. We estimate that the reporting of student identifier information, the location of the institution the student attended, and the CIP codes for each beginning student will average .03 hours (2 minutes) per student or 14,518 hours of increased burden.

We estimate that 1,342,097 of the 3,499,998 students will attend a public institution. Therefore, with regard to public institutions, the total number of affected students is estimated to be 4,026,291 students (1,342,097 times 3) for the initial reporting period that will cover the 2006–2007 award year, the 2007–2008 award year and the 2008–2009 award year. We estimate that the reporting of student identifier information, the location of the institution the student attended, and the CIP codes for each beginning student will average .03 hours (2 minutes) per student or 120,789 hours of increased burden.

Collectively, we estimate that burden for institutions to meet these reporting requirements for a student who during the award year began attending a program under § 668.8(c)(3) or (d) will increase burden by 315,000 hours in OMB Control Number 1845–NEW1.

We estimate that annually there will be 567,334 students who will complete their occupational programs that train students for gainful employment in a recognized occupation. We estimate that 325,416 of the 567,334 students will attend a proprietary institution. Therefore, with regard to proprietary institutions, the total number of affected students is estimated to be 976,248 students (325,416 times 3) for the initial reporting period that will cover the 2006–2007 award year, the 2007–2008 award year and the 2008–2009 award year. We estimate that the reporting of student identifier information, the location of the institution the student attended, the CIP codes for each graduate, the date of completion, the amounts the students received from private education loans and the amount from institutional financing plans that the student owes the institution after completing the program, and whether the student matriculated to a higher credentialed program at the same or another institution will average .08 hours (5 minutes) per student or 78,100 hours of increased burden.

We estimate that 33,627 of the 567,334 students will attend a private not-for-profit institution. Therefore, with regard to not-for-profit institutions, the total number of affected students is estimated to be 100,881 students (33,627 times 3) for the initial reporting period that will cover the 2006–2007 award year, the 2007–2008 award year and the 2008–2009 award year. We estimate that the reporting of student identifier information, the location of the institution the student attended, the CIP codes for each graduate, the date of completion, the amounts the student received from private education loans and the amount from institutional financing plans that the student owes the institution after completing the program, and whether the student matriculated to a higher credentialed program at the same or another institution will average .08 hours (5 minutes) per student or 8,070 hours of increased burden.

We estimate that 208,291 of the 567,334 students will attend a public institution. Therefore, with regard to public institutions, the total number of affected students is estimated to be 624,873 students (208,291 times 3) for the initial reporting period that will cover the 2006–2007 award year, the 2007–2008 award year and the 2008–2009 award year. We estimate that the reporting of student identifier information, the location of the institution the student attended, the CIP codes for each graduate, the date of completion, the amounts the student received from private education loans and the amount from institutional financing plans that the student owes the institution after completing the program, and whether the student matriculated to a higher credentialed program at the same or another institution will average .08 hours (5 minutes) per student or 49,990 hours of increased burden.

Additionally, later in the initial year of reporting, institutions will have to report information on students who began attendance during the 2009–2010 award year. We estimate that annually there will be 3,499,998 students who will begin attendance in occupational programs that train students for gainful employment in a recognized occupation. As established above, we estimate that 1,996,593 of the 3,499,998 students will begin occupational programs at proprietary institutions during the 2009–2010 award year. We estimate that the reporting of student identifier information, the location of the institution the student attended, and the CIP codes for each beginning student (*i.e.,* a student who during the award year began attending a program under § 668.8(c)(3) or (d)) will average .03 hours (2 minutes) per student or 59,898 hours of increased burden.

We estimate that 161,308 of the 3,499,998 students will attend a private not-for-profit institution. We estimate that the reporting of student identifier information, the location of the institution the student attended, and the CIP codes for each beginning student will average .03 hours (2 minutes) per student or 4,839 hours of increased burden.

We estimate that 1,342,097 of the 3,499,998 students will attend a public institution. We estimate that the reporting of student identifier information, the location of the institution the student attended, and the CIP codes for each beginning student will average .03 hours (2 minutes) per student or 40,263 hours of increased burden.

Similarly, we estimate that annually there will be 567,334 students who will complete their occupational programs that train students for gainful employment in a recognized occupation during the 2009–2010 award year. We estimate that 325,416 of the 567,334 students will complete their program at a proprietary institution during the 2009–2010 award year. We estimate that the reporting of student identifier information, the location of the institution the student attended, the CIP codes for each graduate, the date of completion, the amounts the students received from private education loans

and the amount from institutional financing plans that the student owes the institution after completing the program, and whether the student matriculated to a higher credentialed program at the same or another institution will average .08 hours (5 minutes) per student or 26,033 hours of increased burden for the 2009–2010 award year.

We estimate that 33,627 of the 567,334 students will complete their program at a private not-for-profit institution. We estimate that the reporting of student identifier information, the location of the institution the student attended, the CIP codes for each graduate, the date of completion, the amounts the student received from private education loans and the amount from institutional financing plans that the student owes the institution after completing the program, and whether the student matriculated to a higher credentialed program at the same or another institution will average .08 hours (5 minutes) per student or 2,690 hours of increased burden during the 2009–2010 award year.

We estimate that 208,291 of the 567,334 students will complete their program at a public institution during the 2009–2010 award year. We estimate that the reporting of student identifier information, the location of the institution the student attended, the CIP codes for each graduate, the date of completion, the amounts the student received from private education loans and the amount from institutional financing plans that the student owes the institution after completing the program, and whether the student matriculated to a higher credentialed program at the same or another institution will average .08 hours (5 minutes) per student or 16,663 hours of increased burden for the 2009–2010 award year.

Collectively, we estimate that burden for institutions to meet these reporting requirements for students who begin attendance or complete their occupational programs that train students for gainful employment in a recognized occupation will increase burden by 658,758 hours in OMB Control Number 1845–NEW1.

Finally, under § 668.6(b) an institution will be required to disclose to each prospective student information about (1) The occupations (by names and Standard Occupational Code (SOC) codes) that its programs prepare students to enter, along with links to occupational profiles on O*NET or its successor site, or if the number of occupations related to the program on O*Net is more than ten (10), the institution may provide Web links to a representative sample of SOC codes for which its graduates typically find employment within a few years after completing their program; (2) the on-time graduation rate for students entering the program; (3) the total amount of tuition and fees it charges a student for completing the program within normal time as defined in § 668.41(a), the typical costs for books and supplies, and the cost of room and board, if applicable. The institution may include information on other costs, such as transportation and living expenses, but it must provide a Web link, or access, to the program cost information the institution makes available under § 668.43(a); (4) beginning on July 1, 2011, the placement rate for students completing the program, as determined under the institution's accrediting agency or State requirements, until a new placement rate methodology is developed by the National Center for Education Statistics (NCES) and reported to the institution; and (5) the median loan debt incurred by students who completed the program as provided by the Secretary, as well as any other information the Secretary provided to the institution about that program. The institution must identify separately the median loan debt from title IV, HEA programs and the median loan debt from private educational loans and institutional financing plans.

We estimate that of the 5,601 institutions with these occupational programs that 1,950, or 35%, are proprietary institutions. We estimate that of the 5,601 with these occupational programs that 1,736, or 31%, are private not-for-profit institutions. We estimate that of the 5,601 with these occupational programs that 1,915, or 34%, are public institutions. Because under the revised disclosure requirements, institutions may use a representative sample of SOC codes and use placement rate data already required by their accrediting agency or State, or data that will be provided by the Department, we estimate that on average, it will take 1.5 hours for an institution to obtain the required disclosure information from O*Net and its own programmatic cost information and to provide that information on its Web site and in its promotional materials. Therefore, we estimate that burden for 1,950 proprietary institutions will increase by 2,925 hours. We estimate that burden for 1,736 private not-for-profit institutions will increase by 2,604 hours. We estimate that burden for 1,915 public institutions will increase by 2,873 hours.

Collectively, we estimate that burden for institutions to meet these disclosure requirements for prospective students will increase burden by 8,402 hours in OMB Control Number 1845–NEW1.

We estimate the total burden under this section to increase by 677,160 hours in OMB Control Number 1845–NEW1.

Section 668.8—Eligible Program

Under S668.8(l)(1), we will revise the method of converting clock hours to credit hours to use a ratio of the minimum clock hours in an academic year to the minimum credit hours in an academic year, *i.e.,* 900 clock hours to 24 semester or trimester hours or 36 quarter hours. Thus, a semester or trimester hour will be based on at least 37.5 clock hours, and a quarter hour will be based on at least 25 clock hours. Section 668.8(l)(2) will create an exception to the conversion ratio in § 668.8(l)(1) if neither an institution's designated accrediting agency nor the relevant State licensing authority for participation in the title IV, HEA programs determines there are any deficiencies in the institution's policies, procedures, and practices for establishing the credit hours that the institution awards for programs and courses, as defined in § 600.2. Under the exception provided by § 668.8(l)(2), an institution will be permitted to combine students' work outside of class with the clock-hours of instruction in order to meet or exceed the numeric requirements established in § 668.8(l)(1). However, under § 668.8(l)(2), the institution will need to use at least 30 clock hours for a semester or trimester hour or 20 clock hours for a quarter hour.

In determining whether there is outside work that a student must perform, the analysis will need to take into account differences in coursework and educational activities within the program. Some portions of a program may require student work outside of class that justifies the application of § 668.8(l)(2). In addition, the application of § 668.8(l)(2) could vary within a program depending on variances in required student work outside of class for different portions of the program. Other portions of the program may not have outside work, and § 668.8(l)(1) will need to be applied. Of course, an institution applying only § 668.8(l)(1) to a program eligible for conversion from clock hours to credit hours, without an analysis of the program's coursework, will be considered compliant with the requirements of § 668.8(l).

Section 668.8(k)(1)(ii) will modify a provision in current regulations to provide that a program is not subject to the conversion formula in § 668.8(l) where each course within the program is acceptable for full credit toward a degree that is offered by the institution and that this degree requires at least two academic years of study. Additionally, under § 668.8(k)(1)(ii), the institution will be required to demonstrate that students enroll in, and graduate from, the degree program.

Section 668.8(k)(2)(i) will provide that a program is considered to be a clock-hour program if the program must be measured in clock hours to receive Federal or State approval or licensure, or if completing clock hours is a requirement for graduates to apply for licensure or the authorization to practice the occupation that the student is intending to pursue. Under § 668.8(k)(2)(ii) and (iii), the program will also be considered to be offered in clock hours if the credit hours awarded for the program are not in compliance with the definition of a credit hour in § 600.2, or if the institution does not provide the clock hours that are the basis for the credit hours awarded for the program or each course in the program and, except as provided in current § 668.4(e), requires attendance in the clock hours that are the basis for the credit hours awarded. The final regulations on which tentative agreement was reached will not include the provision in § 668.8(k)(2)(iii) that, except as provided in current § 668.4(e), an institution must require attendance in the clock hours that are the basis for the credit hours awarded.

Section 668.8(k)(3) will provide that § 668.8(k)(2)(i) will not apply if a limited portion of the program includes a practicum, internship, or clinical experience component that must include a minimum number of clock hours due to a State or Federal approval or licensure requirement.

We estimate that on average, for each affected program it will take .5 hours (30 minutes) for an institution to make the determination of whether the program is an affected program, to evaluate the amount of outside student work that should be included as final and to perform the clock hour to credit hour conversion. We further estimate that of the 4,587 institutions of higher education with less than 2-year programs, that on average, each institution has approximately 8 non-degree programs of study for a total of 36,696 affected programs. We estimate that there are 16,513 affected programs at proprietary institutions times .5 hours (30 minutes) which will increase burden by 8,257 hours. We estimate that there are 1,835 affected programs at private non-profit institutions times .5 hours (30 minutes) which will increase burden by 918 hours. We estimate that there are 18,348 affected programs at public institutions times .5 hours (30 minutes) which will increase burden by 9,174 hours.

Collectively, the final regulatory changes reflected in § 668.8 will increase burden by 18,349 hours in OMB Control Number 1845–0022.

Section 668.16—Standards of Administrative Capability

Under the final regulations, the elements of the institution's satisfactory academic progress plan have been moved from current § 668.16(e) to § 668.34. We also have updated these provisions. As a result, the estimated burden upon institutions associated with measuring academic progress currently in OMB Control Number 1845–0022 of 21,000 hours will be administratively removed from this collection and transferred to OMB Control Number 1845–NEW2.

Under § 668.16(p), an institution will be required to develop and follow procedures to evaluate the validity of a student's high school completion if the institution or the Secretary has reason to believe that the high school diploma is not valid or was not obtained from an entity that provides secondary school education. The burden associated with this requirement will be mitigated by the fact that many institutions already have processes in place to collect high school diplomas and make determinations about their validity.

We estimate that burden will increase for each institution by 3.5 hours for the development of a high school diploma validity process. We estimate that 2,086 proprietary institutions will on average take 3.5 hours to develop the final procedures to evaluate the validity of high school completions, which will increase burden by 7,301 hours. We estimate that 1,731 private non-profit institutions will on average take 3.5 hours to develop the final procedures to evaluate the validity of high school completion, which will increase burden by 6,059 hours. We estimate that 1,892 public institutions will on average take 3.5 hours to develop the final procedures to evaluate the validity of high school completion, which will increase burden by 6,622 hours.

Additionally, we estimate that the validity of approximately 4,000 high school diplomas per year will be questioned and that these diplomas will require additional verification, which we estimate will take .5 hours (30 minutes) per questionable diploma. We estimate that proprietary institutions will have 2,000 questionable diplomas, which will result in an estimated 1,000 hours of increased burden (2000 diplomas multiplied by .5 hours). We estimate that private non-profit institutions will have 600 questionable diplomas, which will result in an estimated 300 hours of increased burden (600 diplomas multiplied by .5 hours). We estimate that public institutions will have 1,400 questionable, which will result in an estimated 700 hours of increased burden (1400 diplomas multiplied by .5 hours).

Collectively, the final regulatory changes reflected in § 668.16 will increase burden by 21,982 hours in OMB Control Number 1845–0022.

Section 668.22—Treatment of Title IV, HEA Program Funds When a Student Withdraws

The changes to § 668.22(a)(2) clarify when a student is considered to have withdrawn from a payment period or period of enrollment. In the case of a program that is measured in credit hours, the student will be considered to have withdrawn if he or she does not complete all the days in the payment period or period of enrollment that the student was scheduled to complete prior to withdrawing. In the case of a program that is measured in clock hours, the student will be considered to have withdrawn if he or she does not complete all of the clock hours in the payment period or period of enrollment that the student was scheduled to complete prior to withdrawing.

Section 668.22(f)(2)(i) clarifies that, for credit hour programs, in calculating the percentage of the payment period or period of enrollment completed, it is necessary to take into account the total number of calendar days that the student was scheduled to complete prior to withdrawing without regard to any course completed by the student that is less than the length of the term.

These final regulations will affect all programs with courses that are less than the length of a term, including, for example, a semester-based program that has a summer nonstandard term with two consecutive six-week sessions within the term.

We estimate that approximately 425,075 students in term-based programs with modules or compressed courses will withdraw prior to completing more than 60 percent of their program of study. We estimate that on average, the burden per individual student who withdraws prior to the 60 percent point of their term-based program to be .75 hours (45 minutes)

per affected individual which will increase burden for the estimated 425,075 students by 318,806 hours in OMB Control Number 1845–0022. Of these 425,075 withdrawals, we estimate that 50 percent of the withdrawals (212,538) will occur at proprietary institutions and will increase burden by 1 hour per withdrawal increasing burden by 212,538 hours. We estimate that 10 percent of the withdrawals (42,508) will occur at private non-profit institutions and will increase burden by 1 hour per withdrawal increasing burden by 42,508 hours. We estimate that 40 percent of the withdrawals (170,029) will occur at public institutions and will increase burden by 1 hour per withdrawal increasing burden by 170,029 hours. Collectively, we estimate that burden will increase by 743,881 hours in OMB Control Number 1845–0022, of which 318,806 hours is for individuals and 425,075 hours is for institutions.

Section 668.34—Satisfactory Progress

The final regulations restructure the satisfactory academic progress requirements. Section 668.16(e) (Standards of administrative capability) has been revised to include only the requirement that an institution establish, publish and apply satisfactory academic progress standards that meet the requirements of § 668.34. The remainder of current § 668.16(e) has been moved to § 668.34 such that it, alone, describes all of the required elements of a satisfactory academic progress policy, as well as how an institution will implement such a policy. The references in § 668.32(e) have been updated to conform the section with the final changes we have made to §§ 668.16(e) and 668.32.

Section 668.34(a) specifies the elements an institution's satisfactory academic policy must contain to be considered a reasonable policy. Under these regulations, institutions will continue to have flexibility in establishing their own policies; institutions that choose to measure satisfactory academic progress more frequently than at the minimum required intervals will have additional flexibility (see § 668.34(a)(3)).

All of the policy elements in the current regulations under §§ 668.16(e) and 668.34 are combined in § 668.34. In addition, § 668.34(a)(5) makes explicit the requirement that institutions specify the pace at which a student must progress through his or her educational program to ensure that the student will complete the program within the maximum timeframe, and provide for measurement of a student's pace at each evaluation. Under § 668.34(a)(6), institutional policies will need to describe how a student's GPA and pace of completion are affected by transfers of credit from other institutions. This provision will also require institutions to count credit hours from another institution that are accepted toward a student's educational program as both attempted and completed hours.

Section 668.34(a)(7) provides that, except as permitted in § 668.34(c) and (d), the policy requires that, at the time of each evaluation, if the student is not making satisfactory academic progress, the student is no longer eligible to receive the title IV, HEA assistance.

Section 668.34(a)(8) requires institutions that use "financial aid warning" and "financial aid probation" statuses (concepts that are defined in § 668.34(b)) in connection with satisfactory academic progress evaluations to describe these statuses and how they are used in their satisfactory academic progress policies. Section 668.34(a)(8)(i) specifies that a student on financial aid warning may continue to receive assistance under the title IV, HEA programs for one payment period despite a determination that the student is not making satisfactory academic progress. Financial aid warning status may be assigned without an appeal or other action by the student. Section 668.34(a)(8)(ii) makes clear that an institution with a satisfactory academic progress policy that includes the use of the financial aid probation status could require that a student on financial aid probation fulfill specific terms and conditions, such as taking a reduced course load or enrolling in specific courses.

Section 668.34(a)(9) will require an institution that permits a student to appeal a determination that the student is not making satisfactory academic progress to describe the appeal process in its policy. The policy will need to contain specified elements. Section 668.34(a)(9)(i) will require an institution to describe how a student may re-establish his or her eligibility to receive assistance under the title IV, HEA programs.

Under § 668.34(a)(9)(ii), a student will be permitted to file an appeal based on the death of a relative, an injury or illness of the student, or other special circumstances. Under § 668.34(a)(9)(iii), a student will be required to submit, as part of the appeal, information regarding why the student failed to make satisfactory academic progress, and what has changed in the student's situation that will allow the student to demonstrate satisfactory academic progress at the next evaluation.

Section 668.34(a)(10) will require the satisfactory academic progress policy of an institution that does not permit students to appeal a determination that they are not making satisfactory academic progress, to describe how a student may regain eligibility for assistance under the title IV, HEA programs.

Section 668.34(a)(11) will require that an institution's policy provide for notification to students of the results of an evaluation that impacts the student's eligibility for title IV, HEA program funds.

We estimate that, on average, institutions will take 3 hours per institution to review the final regulations in § 668.34(a) and implement any changes to their satisfactory academic policies to insure compliance. We estimate that 2,086 proprietary institutions will take 3 hours per institution to review and implement the final regulations, which will result in an estimated increase of 6,258 hours in burden. We estimate that 1,731 private non-profit institutions will take 3 hours per institution to review and implement the final regulations, which will result in an estimated increase of 5,193 hours in burden. We estimate that 1,892 public institutions will take 3 hours per institution to review and implement the final regulations, which will result in an estimated increase of 5,676 hours in burden.

Collectively, the final regulatory changes reflected in § 668.34(a) will increase burden by 17,127 hours.

Section 668.34(c) and (d) will specify that an institution's policy may provide for disbursement of title IV, HEA program funds to a student who has not met an institution's satisfactory academic standards in certain circumstances. Of the 17 million applicants in 2008–2009, we estimate that 90 percent (or 15,300,000 individuals) will begin attendance. We estimate that of the 15,300,000 individuals that begin attendance, that 90 percent (or 13,770,000 individuals) will persist at least through the end of the initial payment period and, therefore, will be subject to the institutions' satisfactory academic progress consistent with the provisions of § 668.34. We estimate that 38 percent of participating institutions will evaluate their students at the end of each payment period under § 668.34(c); therefore we expect 5,232,600 individuals to be evaluated more than annually (13,770,000 individuals multiplied 38 percent). We estimate that 62 percent of participating institutions will evaluate their students once per

academic year under § 668.34(d); therefore, we expect 8,537,400 individuals to be evaluated annually (13,770,000 individuals multiplied by 62 percent).

Section 668.34(c) will permit an institution that measures satisfactory academic progress at the end of each payment period to have a policy that will permit a student who is not making satisfactory academic progress to be placed automatically on financial aid warning, a newly defined term. We estimate that, as a result of this requirement, the burden associated with an academic progress measurement at the end of each payment period, and when required, the development of an academic plan for the student, will increase. We estimate that 1,936,062 individuals at proprietary institutions will require an academic review more than once per academic year (proprietary institutions, which comprise 37 percent of the total number of institutions of higher education, multiplied by 5,232,600 individuals). Given this number of individuals (1,936,062) and an average of 2 reviews per academic year under this requirement, we expect these institutions to conduct 3,872,124 satisfactory academic progress reviews. Because these academic progress reviews are generally highly automated, we estimate that, on average, each review will take .02 hours (1.2 minutes) and will increase burden by 77,442 hours.

We estimate that 1,569,780 individuals at private non-profit institutions will require an academic review (private non-profit institutions, which comprise 30 percent of the total number of institutions of higher education, multiplied by 5,232,600 individuals). Given this number of individuals (1,569,780) and an average of 2 reviews per academic year under this requirement, we expect these institutions to conduct 3,139,560 satisfactory academic progress reviews. Because these academic progress reviews are generally highly automated, we estimate that, on average, each review will take .02 hours (1.2 minutes) and will increase burden by 62,791 hours.

We estimate that 1,726,758 individuals at public institutions will require an academic review (public institutions, which comprise 33 percent of the total number of institutions of higher education, multiplied by 5,232,600 individuals). Given this number of individuals (1,726,758) and an average of 2 reviews per academic year under this requirement, we expect these institutions to conduct 3,453,516 satisfactory academic progress reviews. Because these academic progress reviews are generally highly automated, we estimate that, on average, each review will take .02 hours (1.2 minutes) and will increase burden by 69,070 hours.

Collectively, we estimate that the burden for institutions under this requirement will increase by 209,303 hours, in OMB Control Number 1845–NEW2.

As a result of the final satisfactory academic progress reviews conducted by institutions, we estimate that 7 percent of the 5,232,600 enrolled students (at institutions that review academic progress more often than annually) or 366,282 will not successfully achieve satisfactory academic progress. For these students, institutions will need to work with each student to develop an academic plan and this will increase burden for the individual and the institutions. We estimate that under § 668.34(c), that 366,282 students will, on average, take .17 hours (10 minutes) to establish an academic plan for an increase of 62,268 burden hours and re-evaluate the plan a second time within the academic year for an additional increase of 62,268 burden hours (2 times per academic year), increasing burden to individuals by a total of 124,536 hours.

We estimate that 1,936,062 individuals at proprietary institutions will require the development of an academic plan as a result of not progressing academically (proprietary institutions, which comprise 37 percent of the total number of institutions of higher education, multiplied by 5,232,600 individuals). Given this number of individuals (1,936,062) multiplied by 7 percent (which is our estimate for those who will not academically progress), we expect that 135,524 individuals will need to work with their institutions to develop an academic plan. We estimate that each academic plan will take, on average, .25 hours (15 minutes) of staff time at two times within the academic year, increasing burden by 67,762 hours.

We estimate that 1,569,780 individuals at private non-profit institutions will require the development of an academic plan as a result of not progressing academically (private non-profit institutions, which comprise 30 percent of the total number of institutions of higher education, multiplied by 5,232,600 individuals). Given this number of individuals (1,569,780) multiplied by 7 percent (which is our estimate for those who will not academically progress), we expect that 109,885 individuals will need to work with their institutions to develop an academic plan. We estimate that each academic plan will take, on average, .25 hours (15 minutes) of staff time at two times within the academic year, increasing burden by 54,943 hours.

We estimate that 1,726,758 individuals at public institutions will require the development of an academic plan as a result of not progressing academically (public institutions, which comprise 33 percent of the total number of institutions of higher education, multiplied by 5,232,600 individuals). Given this number of individuals (1,726,758) multiplied by 7 percent (which is our estimate for those who will not academically progress), we expect that 120,873 individuals will need to work with their institutions to develop an academic plan. We estimate that each academic plan will take, on average, .25 hours (15 minutes) of staff time at two times within the academic year, increasing burden by 60,437 hours.

Collectively, therefore, we estimate that the burden for institutions will increase by 183,142 hours, in OMB Control Number 1845–NEW2.

Under § 668.34(d), at an institution that measures satisfactory academic progress annually, or less frequently than at the end of each payment period, a student who has been determined not to be making satisfactory academic progress will be able to receive title IV, HEA program funds only after filing an appeal and meeting one of two conditions: (1) The institution has determined that the student should be able to meet satisfactory progress standards after the subsequent payment period, or (2) the institution develops an academic plan with the student that, if followed, will ensure that the student is able to meet the institution's satisfactory academic progress standards by a specific point in time.

Because the final regulations will transfer the elements of an institution's satisfactory academic policy from § 668.16(e) to § 668.34, we are transferring the current burden estimate of 21,000 hours from the current OMB Control Number 1845–0022 to OMB Control Number 1845–NEW2.

We estimate that 3,158,838 individuals at proprietary institutions (proprietary institutions, which comprise 37 percent of the total number of institutions of higher education, multiplied by 8,537,400 individuals) will require an academic review. Because the academic progress reviews are generally highly automated, we estimate that, on average, each review will take .02 hours (1.2 minutes) and will increase burden by 63,177 hours. We estimate that 2,561,220 individuals

at private non-profit institutions will require an academic review (private non-profit institutions, which comprise 30 percent of the total number of institutions of higher education, multiplied by 8,537,400 individuals). Because the academic progress reviews are generally highly automated, we estimate that, on average, each review will take .02 hours (1.2 minutes) and will increase burden by 51,224 hours.

We estimate that 2,817,342 individuals at public institutions will require an academic review (public institutions, which comprise 33 percent of the total number of institutions of higher education, multiplied by 8,537,400 individuals). Because the academic progress reviews are generally highly automated, we estimate that, on average, each review will take .02 hours (1.2 minutes) and will increase burden by 56,347 hours.

Collectively, we estimate that the burden for institutions will increase by 170,748 hours, in OMB Control Number 1845–NEW2.

As a result of the final satisfactory academic progress reviews conducted by the institutions, we estimate that 7 percent of the 8,537,400 enrolled students (at institutions that review academic progress annually) or 597,618 will not successfully achieve satisfactory academic progress. For these students, institutions will need to work with each student to develop an academic plan and this will increase burden for the individual and the institutions. We estimate that under § 668.34(d), 597,618 students will, on average, take .17 hours (10 minutes) to establish an academic plan, increasing burden to individuals by 101,595 hours.

We estimate that 3,158,838 individuals at proprietary institutions will require the development of an academic plan as a result of not progressing academically (proprietary institutions, which comprise 37 percent of the total number of institutions of higher education, multiplied by 8,537,400 individuals). Given this number of individuals (3,158,838) multiplied by 7 percent (which is our estimate for those who will not academically progress), we expect 221,119 individuals will need to work with their institutions to develop an academic plan. We estimate that each academic plan will take, on average, .25 hours (15 minutes) of staff time, increasing burden by 55,280 hours.

We estimate that 2,561,220 individuals at private non-profit institutions will require the development of an academic plan as a result of not progressing academically (private non-profit institutions, which comprise 30 percent of the total number of institutions of higher education, multiplied by 8,537,400 individuals). Given this number of individuals (2,561,220) multiplied by 7 percent (which is our estimate for those who will not academically progress), we expect 179,285 individuals will need to work with their institutions to develop an academic plan. We estimate that each academic plan will take, on average, .25 hours (15 minutes) of staff time, increasing burden by 44,821 hours.

We estimate that 2,817,342 individuals at public institutions will require the development of an academic plan as a result of not progressing academically (public institutions, which comprise 33 percent of the total number of institutions of higher education, multiplied by 8,537,400 individuals). Given this number of individuals (2,817,342) multiplied by 7 percent (our estimate for those who will not academically progress), we expect 197,214 individuals will need to work with their institutions to develop an academic plan. We estimate that each academic plan will take, on average, .25 hours (15 minutes) of staff time, increasing burden by 49,304 hours.

Collectively, we estimate that the burden for institutions will increase by 149,405 hours, in OMB Control Number 1845–NEW2.

In total, the final regulatory changes reflected in § 668.34 will increase burden by a total of 955,856 hours in OMB Control Number 1845–NEW2; however, when the 21,000 hours of burden currently in OMB 1845–0022 are administratively transferred from OMB 1845–0022 to OMB 1845–NEW2, the grand total of burden hours under this section will increase to 976,856 in OMB 1845–NEW2.

Section 668.43—Institutional Information

The Department has amended current § 668.5(a) by revising and redesignating paragraph (a) as paragraph (a)(1) and adding a new paragraph (a)(2). Section 668.5(a)(1) is based on the language that is in current § 668.5(a), but has been modified to make it consistent with the definition of an "educational program" in 34 CFR 600.2.

Section 668.5(a)(2) specifies that if a written arrangement is between two or more eligible institutions that are owned or controlled by the same individual, partnership, or corporation, the institution that grants the degree or certificate must provide more than 50 percent of the educational program. These clarifications are also intended to ensure that the institution enrolling the student has all necessary approvals to offer an educational program in the format in which it is being provided, such as through distance education when the other institution is providing instruction under a written agreement using that method of delivery.

Section 668.5(c)(1) includes an expanded list of conditions that will preclude an arrangement between an eligible institution and an ineligible institution.

Sections 668.5(e) and 668.43 will require an institution that enters into a written arrangement to provide a description of the arrangement to enrolled and prospective students.

We estimate that 104 proprietary institutions will enter into an average of 1 written arrangement per institution and that, on average, the burden associated with the information collections about written agreements and its disclosure required under § 668.5(e) and 668.43 will take .5 hours (30 minutes) per arrangement, increasing burden by 52 hours.

We estimate that 1,731 private non-profit institutions will enter into an average of 50 written arrangements per institution and that, on average, the burden associated with the final collection of information about written agreements and its disclosure will take .5 hours (30 minutes) per arrangement, increasing burden by 43,275 hours.

We estimate that 1,892 public institutions will enter into an average of 25 written arrangements per institution and that, on average, the burden associated with the final collection of information about written agreements and its disclosure will take .5 hours (30 minutes) per arrangement, increasing burden by 23,650 hours.

Collectively, we estimate that burden will increase for institutions in their reporting of the details of written agreements by 66,977 hours in OMB Control Number 1845–0022.

Currently, the Department requires that an institution must make available for review to any enrolled or prospective student upon request, a copy of the documents describing the institution's accreditation and its State, Federal, or tribal approval or licensing. The Department requires in § 668.43(b) that the institution must also provide its students or prospective students with contact information for filing complaints with its accreditor and State approval or licensing entity.

We estimate that 1,919 (or 92 percent of all 2,086 proprietary institutions) will have to begin providing contact information for filing complaints with accreditors, approval or licensing agencies. We estimate that the other 8 percent of proprietary institutions are

already providing this information. We estimate that on average, this disclosure will take .17 hours (10 minutes) per disclosure and that it will, therefore, increase burden to proprietary institutions by 326 hours.

We estimate that 1,593 (or 92 percent of all 1,731 private non-profit institutions) will have to begin providing contact information for filing complaints with accreditors, approval or licensing agencies. We estimate that the other 8 percent of private non-profit institutions are already providing this information. We estimate that on average, this disclosure will take .17 hours (10 minutes) per disclosure and that it will, therefore, increase burden to private non-profit institutions by 271 hours.

We estimate that 1,740 (or 92 percent of all 1,892 public institutions) will have to begin providing contact information for filing complaints with accreditors, approval or licensing agencies. We estimate that the other 8 percent of public institutions are already providing this information. We estimate that on average, this disclosure will take .17 hours (10 minutes) per disclosure and that it will, therefore, increase burden to proprietary institutions by 296 hours.

Collectively, we estimate that burden will increase for institutions in their reporting of the contact information for filing complaints to accreditors and approval or licensing agencies by 893 hours in OMB Control Number 1845–0022.

In total, the final regulatory changes reflected in § 668.43 will increase burden by 67,870 hours in OMB Control Number 1845–0022.

Section 668.55—Updating Information

Section 668.55 will require an applicant to update all applicable changes in dependency status that occur throughout the award year, including changes in the applicant's household size and the number of those household members attending postsecondary educational institutions. We estimate that 1,530,000 individuals will update their household size or the number of household members attending postsecondary educational institutions and that, on average, reporting will take .08 hours (5 minutes) per individual, increasing burden by 122,400 hours.

We estimate that proprietary institutions will receive updated household size or the updated number of household members attending postsecondary educational institutions from 566,100 applicants. We estimate that each updated record will take .17 hours (10 minutes) to review, which will increase burden by 96,237 hours.

We estimate that private non-profit institutions will receive updated household size or the updated number of household members attending postsecondary educational institutions from 459,000 applicants. We estimate that each updated record will take .17 hours (10 minutes) to review, which will increase burden by 78,030 hours.

We estimate that public institutions will receive updated household size or the updated number of household members attending postsecondary educational institutions from 504,900 applicants. We estimate that each updated record will take .17 hours (10 minutes) to review, which will increase burden by 85,833 hours.

Collectively, we estimate that burden will increase for individuals and institutions as a result of being required to report updated household size and the updated number of household members attending postsecondary educational institutions by 382,500 hours in OMB Control Number 1845–0041, of which 122,400 hours is for individuals and 260,100 hours is for institutions.

This section also requires individuals to make changes to their FAFSA information if their marital status changes, but only at the discretion of the financial aid administrator because such an update is necessary to address an inequity or to reflect more accurately the applicant's ability to pay. As a result, we estimate that of the 170,000 individuals that will have a change of marital status, we expect that this discretion will be applied in only ten percent of the cases, therefore, ten percent of the 170,000 estimated cases is 17,000 cases that on average the reporting will take .08 hours (5 minutes) per individual, increasing burden by 1,360 hours.

We estimate that proprietary institutions will receive updated marital status information from 6,290 applicants. We estimate that each updated record will take .17 hours (10 minutes) to review, which will increase burden by 1,069 hours.

We estimate that private non-profit institutions will receive updated marital status information from 5,100 applicants. We estimate that each updated record will take .17 hours (10 minutes) to review, which will increase burden by 867 hours.

We estimate that public institutions will receive updated marital status information from 5,610 applicants. We estimate that each updated record will take .17 hours (10 minutes) to review, which will increase burden by 954 hours.

Collectively, we estimate that burden will increase for individuals and institutions in their reporting updated marital status information by 4,250 hours in OMB Control Number 1845–0041.

Section 668.55 will also include a number of other changes to remove language that implements the marital status exception in the current regulations, including removing current § 668.55(a)(3) and revising § 668.55(b).

In total, the final regulatory changes reflected in § 668.55 will increase burden by 386,750 hours in OMB Control Number 1845–0041.

Section 668.56—Information To Be Verified

The Department will eliminate from the regulations the five items that an institution currently is required to verify for all applicants selected for verification. Instead, pursuant to § 668.56(a), for each award year, the Secretary will specify in a **Federal Register** notice the FAFSA information and documentation that an institution and an applicant may be required to verify. The Department will then specify on an individual student's SAR and ISIR what information must be verified for that applicant.

Currently, under OMB Control Number 1845–0041, there are 1,022,384 hours of burden associated with the verification regulations of which 1,010,072 hours of burden are a result of the data gathering and submission by each individual applicant selected for verification. This estimate was based upon the number of applicants in the 2002–2003 award year. Since then, the number of applicants has grown significantly to 17.4 million applicants for the 2008–2009 award year, of which we project 5.1 million individual applicants to be selected for verification.

The projected number of items to be verified under the final regulations is expected to be reduced from the current five required data elements to an average of three items per individual. This projected reduction in items to be verified will result in a reduction of burden per individual applicant. Also, as a result of collecting information to verify applicant data on this smaller average number of data elements (three items instead of five items), the average amount of time for the individual applicant to review verification form instructions, gather the data, respond on a form and submit a form and the supporting data will decrease from the current average of .20 hours (12 minutes) per individual to .12 hours (7

minutes), thus further reducing burden on the individual applicant.

For example, when we consider the estimated 5.1 million 2008–2009 applicants selected for verification at an average of .20 hours (12 minutes) to collect and submit information, including supporting documentation for the five required data elements (which is the estimated amount of time that is associated with the requirements in current § 668.56(a)), the requirements in that section yields a total burden of 1,020,000 hours added to OMB Control Number 1845–0041. However, under § 668.56(b), where the number of verification data elements will be reduced to an average of three, the estimated 5.1 million individuals selected for verification multiplied by the reduced average of .12 minutes (7 minutes) yields an increase of 612,000 hours in burden. Therefore, we will expect the burden to be 408,000 hours less than under the current regulations.

As a result, for OMB reporting purposes, we estimate that the individuals, as a group, will have an increase in burden by 612,000 hours in OMB Control Number 1845–0041 (rather than 1,020,000 hours).

Section 668.57—Acceptable Documentation

We have made a number of technical and conforming changes throughout § 668.57. We also have made the following substantive changes described in this section.

Section 668.57(a)(2) will allow an institution to accept, in lieu of an income tax return or an IRS form that lists tax account information, the electronic importation of data obtained from the IRS into an applicant's online FAFSA.

We also have amended § 668.57(a)(4)(ii)(A) to accurately reflect that, upon application, the IRS grants a six-month extension beyond the April 15 deadline rather than the four-month extension currently stated in the regulations.

Under § 668.57(a)(5), an institution may require an applicant who has been granted an extension to file his or her income tax return to provide a copy of that tax return once it has been filed. If the institution requires the applicant to submit the tax return, it will need to re-verify the AGI and taxes paid of the applicant and his or her spouse or parents when the institution receives the return.

Section 668.57(a)(7) clarifies that an applicant's income tax return that is signed by the preparer or stamped with the preparer's name and address must also include the preparer's Social Security number, Employer Identification Number or the Preparer Tax Identification Number.

Section 668.57(b) and (c) remain substantively unchanged.

We have deleted current § 668.57(d) regarding acceptable documentation for untaxed income and benefits and replaced it with a new § 668.57(d). This new section provides that, if an applicant is selected to verify other information specified in an annual **Federal Register** notice, the applicant must provide the documentation specified for that information in the **Federal Register** notice.

Currently under OMB Control Number 1845–0041, there are 1,022,384 hours of burden associated with the verification regulations, of which 12,312 hours are attributable to institutions of higher education to establish their verification policies and procedures. Under § 668.57, we estimate that, on average, institutions will take .12 hours (7 minutes) per applicant selected for verification to review and take appropriate action based upon the information provided by the applicant, which in some cases may mean correcting applicant data or having the applicant correct his or her data. Under current § 668.57, when we consider the significant increase to 17.4 million applicants in the 2008–2009 award year, of which 5.1 million will be selected for verification at an average of .20 hours (12 minutes) per verification response received from applicants by the institutions for review, the total increase in burden will be 1,020,000 additional hours. However, under § 668.57, both the average number of items to be verified will be reduced from five items to three items, as well as the average amount of time to review will decrease from .20 hours (12 minutes) to .12 hours (7 minutes). Therefore, the burden to institutions will be 612,000 burden hours (that is, 5.1 million multiplied by .12 hours (7 minutes))—rather than 1,020,000 burden hours (*i.e.,* 5.1 million applicants multiplied by .20 hours (12 minutes)). Thus, as compared to the burden under the current regulations, using the number of applicants from 2008–2009—17.4 million—there will be 408,000 fewer burden hours for institutions.

We estimate 226,440 hours of increased burden for proprietary institutions (2,086 proprietary institutions of the total 5,709 affected institutions or 37 percent multiplied by 5,100,000 applicants equals 1,887,000 applicants multiplied by .12 hours (7 minutes)).

We estimate 183,600 hours of increased burden for private non-profit institutions (1,731 private non-profit institutions of the total 5,709 affected institutions or 30 percent multiplied by 5,100,000 applicants equals 1,530,000 applicants multiplied by .12 hours (7 minutes)).

We estimate 201,960 hours of increased burden for public institutions (1,892 public institutions of the total 5,709 affected institution or 33 percent multiplied by 5,100,000 applicants multiplied by .12 hours (7 minutes)).

As a result, for OMB reporting purposes, collectively there will be a projected increase of 612,000 hours of burden for institutions in OMB Control Number 1845–0041.

Section 668.59—Consequences of a Change in FAFSA Information

We have amended § 668.59 by removing all allowable tolerances and requiring instead that an institution submit to the Department all applicable changes to an applicant's FAFSA information resulting from verification for those applicants receiving assistance under any of the subsidized student financial assistance programs (*see* § 668.59(a)).

Under § 668.59(b), for the Federal Pell Grant program, once the applicant provides the institution with the corrected SAR or ISIR, the institution will be required to recalculate the applicant's Federal Pell Grant and disburse any additional funds, if additional funds are payable. If the applicant's Federal Pell Grant will be reduced as a result of verification, the institution will be required to eliminate any overpayment by adjusting subsequent disbursements or reimbursing the program account by requiring the applicant to return the overpayment or making restitution from its own funds (see § 668.59(b)(2)(ii)).

Section 668.59(c) provides that, for the subsidized student financial assistance programs, excluding the Federal Pell Grant Program, if an applicant's FAFSA information changes as a result of verification, the institution must recalculate the applicant's EFC and adjust the applicant's financial aid package on the basis of the EFC on the corrected SAR or ISIR.

With the exception of minor technical edits, § 668.59(d), which describes the consequences of a change in an applicant's FAFSA information, remains substantively the same as current § 668.59(d).

Finally, we have removed current § 668.59(e), the provision that requires an institution to refer to the Department unresolved disputes over the accuracy

of information provided by the applicant if the applicant received funds on the basis of that information.

Both individuals (students) and institutions will be making corrections to FAFSA information as a result of the verification process. We estimate that 30 percent of the 17,000,000 applicants or 5,100,000 individuals (students) will be selected for verification. Of those 5,100,000 individuals, students will submit, on average, 1.4 changes in FAFSA information as a result of verification for 7,140,000 changes, which will take an average of .12 hours (7 minutes) per change, increasing burden to individuals by 856,800 hours.

We estimate that institutions will need to submit 10,200,000 changes in FAFSA information as a result of verification (that is, 5,100,000 individuals selected for verification multiplied by 2.0 changes, which is what we estimate will be the average per individual).

Of the estimated total 10,200,000 changes, we estimate that 3,774,000 changes to FAFSA information as a result of verification will occur at proprietary institutions, which will take an average of .12 hours (7 minutes) per change, increasing burden by 452,880 hours.

Of the estimated total 10,200,000 changes, we estimate that 3,060,000 changes to FAFSA information as a result of verification will occur at private non-profit institutions, which will take an average of .12 hours (7 minutes) per change, increasing burden by 367,200 hours.

Of the estimated total 10,200,000 changes, we estimate that 3,366,000 changes to FAFSA information as a result of verification will occur at public institutions, which will take an average of .12 hours (7 minutes) per change, increasing burden by 403,920 hours.

Collectively, therefore, the final regulatory changes reflected in § 668.59 will increase for individuals and institutions by 2,080,800 hours in OMB Control Number 1845–0041.

Section 668.144—Application for Test Approval

We have clarified and expanded the requirements in current §§ 668.143 and 668.144. In addition, we have consolidated all of the requirements for test approval in one section, § 668.144. Paragraphs (a) and (b) of § 668.144 describe the general requirement for test publishers and States to submit to the Secretary any test they wish to have approved under subpart J of part 668. Paragraph (c) of § 668.144 describes the information that a test publisher must include with its application for approval of a test. Paragraph (d) of § 668.144 describes the information a State must include with its application when it submits a test to the Secretary for approval.

Section 668.144(c)(16) will require test publishers to include in their applications a description of their test administrator certification process. Under § 668.144(c)(17), we will require test publishers to include in their applications, a description of the test anomaly analysis the test publisher will conduct and submit to the Secretary.

Finally, § 668.144(c)(18) will require test publishers to include in their applications a description of the types of accommodations available for individuals with disabilities, including a description of the process used to identify and report when accommodations for individuals with disabilities were provided.

We have added § 668.144(d) to describe what States must include in their test submissions to the Secretary. While this provision replaces the content in current § 668.143, its language has been revised to be parallel, where appropriate, to the test publisher submission requirements in current § 668.144. In addition to making these requirements parallel, § 668.144(d) also includes the new requirements to be added to the test publisher submissions. A description of those new provisions follows:

Both test publishers and States will be required to submit a description of their test administrator certification process that indicates how the test publisher or State, as applicable, will determine that a test administrator has the necessary training, knowledge, skills and integrity to test students in accordance with requirements and how the test publisher or the State will determine that the test administrator has the ability and facilities to keep its test secure against disclosure or release (see § 668.144(c)(16) (test publishers) and § 668.144(d)(7) (States)).

We estimate that a test publisher and State will, on average, take 2.5 hours to develop its process to establish that a test administrator has the necessary training, knowledge, skills and integrity to administer ability-to-benefit (ATB) tests and then to report that process to the Secretary.

We estimate that the burden associated with the currently approved eight (8) ATB tests will increase for the test publishers and States by 20 hours.

The regulations will require both test publishers and States to submit a description of the test anomaly analysis they will conduct. This description must include a description of how they will identify potential test irregularities and make a determination that test irregularities have occurred; an explanation of corrective action to be taken in the event of test irregularities; and information on when and how the Secretary, test administrator, and institutions will be notified if a test administrator is decertified (see § 668.144(c)(17) (test publishers) and § 668.144(d)(8) (States)).

We estimate that each test publisher and State will, on average, take 75 hours to develop its test anomaly process, to establish its test anomaly analysis (where it explains its test irregularity detection process including its decertification of test administrator process) and to establish its reporting process to the Secretary. We estimate that the burden associated with the currently approved eight (8) ATB tests will increase for the test publishers and States by 600 hours.

Under § 668.144(c)(18) and (d)(9) respectively, both test publishers and States will be required to describe the types of accommodations available for individuals with disabilities, and the process for a test administrator to identify and report to the test publisher when accommodations for individuals with disabilities were provided. We estimate that test publishers and States will, on average, take 1 hour to develop and describe to the Secretary the types of accommodations available to individuals with disabilities, to describe the process the test administrator will use to support the identification of the disability and to develop the process to report when accommodations will be used.

We estimate that the burden associated with the currently approved eight (8) ATB tests will increase for the current test publishers by 8 hours.

Collectively, the final regulatory changes in § 668.144 will increase burden for test publishers and States by 628 hours in OMB 1845–0049.

Section 668.150—Agreement Between the Secretary and a Test-Publisher or a State

Section 668.150 provides that States, as well as test publishers, must enter into agreements with the Secretary in order to have their tests approved.

We also have revised this section to require both test publishers and States to comply with a number of new requirements that will be added to the agreement with the Secretary.

These requirements will include:

Requiring the test administrators that they certify to provide them with certain information about whether they have been decertified (see § 668.150(b)(2)).

We estimate that 3,774 individuals (test administrators) will take, on average, .17 hours (10 minutes) to access, read, complete and submit the written certification to a test publisher or State, which will increase burden by 642 hours.

We estimate that it will take each test publisher or State 1 hour per test submission to develop its process to obtain a certification statement from each prospective test administrator, which will increase burden by 8 hours.

We estimate that the review of the submitted written certifications by the test publishers or States for the 3,774 test administrators will take, on average, .08 hours (5 minutes) per certification form, which will increase burden by 302 hours.

With regard to the requirement to immediately notify the test administrator, the Secretary, and institutions when the test administrator is decertified (see § 668.150(b)(6)), we estimate that 1 percent of the 3,774 test administrators will be decertified. We estimate that it will take test publishers and States, on average, 1 hour per decertification to provide all of the final notifications, which will increase burden for test publishers and States by 38 hours.

With regard to the requirement to review test results of tests administered by a decertified test administrator and immediately to notify affected institutions and students (see § 668.150(b)(7)), we estimate that burden will increase. We estimate that 481,763 ATB tests will be taken for title IV, HEA purposes annually. Of the annual total of ATB tests provided, we estimate that 1 percent will be improperly administered and that 4,818 individuals will be contacted, which will take, on average, .25 hours (15 minutes) per individual. As a result, we estimate that burden will increase to test publishers and States by 1,205 hours.

In addition, we estimate that it will take test publishers and States, on average, 5 hours per ATB test submitted, to develop the process to determine when ATB tests have been improperly administered, which for 8 approved ATB tests will increase burden by 40 hours.

We estimate that test publishers and States will, on average, take .33 hours (20 minutes) for each of the 4,818 estimated improperly administered ATB tests to make the final notifications to institutions, students and prospective students, which will increase burden by 1,590 hours.

We estimate that 38 test administrators (1 percent of the 3,774 test administrators) will be decertified. Of the 38 decertified test administrators, we estimate that 1 previously de-certified test administrator (2 percent of 38 test administrators) will be re-certified after a three-year period and, therefore, reported to the Secretary. We estimate the burden for test publishers and States for this reporting will be 1 hour. We project that it will be very rare that a decertified test administrator will seek re-certification after the three-year decertification period.

Under § 668.150(b)(13), test publishers and States must provide copies of test anomaly analysis every 18 months instead of every 3 years. We estimate that it will take a test publisher or State, on average, 75 hours to conduct its test anomaly analysis and report the results to the Secretary every 18 months. We estimate the burden on test publishers and States for the submission of the 8 test anomaly analysis every 18 months will be 600 hours.

Under § 668.150(b)(15), test publishers and States will be required to report to the Secretary any credible information indicating that a test has been compromised (see § 668.150(b)(15)). We estimate that 481,763 ATB tests for title IV, HEA purposes will be given on an annual basis. Of that total number ATB tests given, we estimate that 482 ATB tests will be compromised. On average, we estimate that test publishers and States will take 1 hour per test to collect the credible information to make the determination that a test will be compromised and report it to the Secretary. We estimate that burden will increase by 482 hours.

Section 668.150(b)(16) will require test publishers and States to report to the Office of Inspector General of the Department of Education any credible information indicating that a test administrator or institution may have engaged in civil or criminal fraud or other misconduct. We estimate that 481,763 ATB tests for title IV, HEA purposes will be given on an annual basis. Of that total number ATB tests given, we estimate that 482 ATB tests will be compromised. On average, we estimate that test publishers or States will take 1 hour per test to collect the credible information to make the determination that a test administrator or institution may have engaged in fraud or other misconduct and report it to the U.S. Department of Education's Office of the Inspector General. We estimate that, as a result of this requirement, burden will increase by 482 hours.

Section 668.150(b)(17) requires a test administrator who provides a test to an individual with a disability who requires an accommodation in the test's administration to report to the test publisher or the State the nature of the disability and the accommodations that were provided. Census data indicate that 12 percent of the U.S. population is severely disabled. We estimate that 12 percent of the ATB test population (481,763 ATB test takers) or 57,812 of the ATB test takers will be individuals with disabilities that will need accommodations for an ATB test. We estimate that it will take .08 hours (5 minutes) to report the nature of the disability and any accommodation that the test administrator made for the test taker, increasing burden by 4,625 hours.

We estimate that, on average, test publishers and States will take 2 hours per ATB test to develop the process for having test administrators report the nature of the test taker's disability and any accommodations provided. We expect this to result in an increase burden for test publishers and States by 16 hours (2 hours multiplied by 8 ATB tests).

Collectively, the final changes reflected in § 668.150 will increase burden by 10,031 hours in OMB Control Number 1845–0049.

Section 668.151—Administration of Tests

Section 668.151(g)(4) will require institutions to keep a record of each individual who took an ATB test and the name and address of the test administrator who administered the test and any identifier assigned to the test administrator by the test publisher or the State.

We estimate that 481,763 ATB tests for title IV, HEA purposes will be given on an annual basis. We estimate that proprietary institutions will give 173,445 tests (36 percent of those ATB tests) and that, on average, the amount of time to record the test takers' name and address as well as the test administrators' identifiers will be .08 hours (5 minutes) per test, increasing burden for proprietary institutions by 13,876 hours.

We estimate that private non-profit institutions will give 149,347 tests (31 percent of the total annual ATB tests given) and that, on average, the amount of time to record the test takers' name and address, as well as the test administrators' identifiers will be .08 hours (5 minutes) per test, increasing burden for private non-profit institutions by 11,948 hours.

We estimate that public institutions will give 158,962 tests (33 percent of the total annual ATB tests given) and that, on average, the amount of time to record the test takers' name and address as well as the test administrators' identifiers

will be .08 hours (5 minutes) per test, increasing burden for public institutions by 12,717 hours.

If the individual who took the test has a disability and is unable to be evaluated by the use of an approved ATB test, or the individual requested or required a testing accommodation, the institution will be required, under § 668.151(g)(5), to maintain documentation of the individual's disability and of the testing arrangements provided. Census data indicate that 12 percent of the U.S. population is severely disabled. We estimate that 12 percent of the ATB test population (481,763 ATB test takers) or 57,812 of the ATB test takers will be individuals with disabilities that will need accommodations for the ATB test. We estimate that it will take .08 hours (5 minutes) to collect and maintain documentation of the individual's disability and of the testing accommodations provided to the test taker.

We estimate that proprietary institutions will give 20,812 tests (36 of the total annual ATB tests given), resulting in an increase in burden for proprietary institutions by 1,665 hours (20,812 tests multiplied by .08 hours).

We estimate that private non-profit institutions will give 17,922 tests (31 percent of the total annual ATB tests given), resulting in an increase in burden for private non-profit institutions by 1,434 hours (17,922 tests multiplied by .08 hours).

We estimate that public institutions will give 19,078 tests (33 percent of the total annual ATB tests given), resulting in an increase in burden for public institutions by 1,526 hours (19,078 tests multiplied by .08 hours).

Collectively, the final regulatory changes reflected in § 668.151 will increase burden by 43,166 hours in OMB Control Number 1845–0049.

Section 668.152—Administration of Tests by Assessment Centers

Section 668.152(a) clarifies that assessment centers are also required to comply with the provisions of § 688.153 (Administration of tests for individuals whose native language is not English or for individuals with disabilities), if applicable.

Under § 668.152(b)(2), assessment centers that score tests will be required to provide copies of completed tests or lists of test-takers' scores to the test publisher or the State, as applicable, on a weekly basis. Under § 668.152(b)(2)(i) and (b)(2)(ii), copies of completed tests or reports listing test-takers' scores will be required to include the name and address of the test administrator who administered the test and any identifier assigned to the test administrator by the test publisher or the State.

We estimate that of the 3,774 ATB test administrators approximately one-third (.3328 times 3,774) or 1,256 of the ATB test administrators are at test assessment centers. Of the 1,256 test assessment centers, we estimate that 18 percent or 226 test assessment centers are at private non-profit institutions and 82 percent or 1,030 test assessment centers are at public institutions. We estimate that 92 percent of the ATB tests provided at test assessment centers are scored by the test administrators. Therefore, under the regulations, the institution will be required to maintain the scored ATB tests, to collect and submit copies of the completed ATB tests or a listing to the test publisher or State on a weekly basis, while the other 8 percent will not be impacted by these regulations. We estimate that, on average, it will take .08 hours (5 minutes) per week for the test assessment center (institution) to collect and submit the final information.

For the 226 test assessment centers at private non-profit institutions, we expect 940 hours of increased annual burden (226 test assessment centers multiplied by .08 hours (5 minutes) and then multiplied by 52 weeks in a year).

For the 1,030 test assessment centers at public institutions, we expect 4,285 hours of increased annual burden (1,030 test assessment centers multiplied by.08 hours (5 minutes) and then multiplied by 52 weeks in a year).

Collectively, the final regulatory changes reflected in § 668.152 will increase burden by 5,225 hours in OMB Control Number 1845–0049.

Section 668.164—Disbursing Funds

Under § 668.164(i), an institution will provide a way for a Federal Pell Grant eligible student to obtain or purchase required books and supplies by the seventh day of a payment period under certain conditions. An institution will have to comply with this requirement only if, 10 days before the beginning of the payment period, the institution could disburse the title IV, HEA program funds for which the student is eligible, and presuming that those funds were disbursed, the student will have a title IV, HEA credit balance under § 668.164(e). The amount the institution will provide to the student for books and supplies will be the lesser of the presumed credit balance or the amount needed by the student, as determined by the institution. In determining the amount needed by the student, the institution could use the actual costs of books and supplies or the allowance for books and supplies used in the student's cost of attendance for the payment period.

We estimate that of the 6,321,678 Federal Pell Grant recipients in the 2008–2009 award year, that approximately 30 percent or 1,896,503 will have or did have a title IV, HEA credit balance. Of that number of Federal Pell Grant recipients, we estimate that 25 percent or 474,126 Federal Pell Grant recipients will have a presumed credit balance 10 days prior to the beginning of the payment period, and as final, that the institution will have to provide a way for those recipients to either obtain or purchase their books and supplies within 7 days of the beginning of the payment period.

We estimate that the 2,063 proprietary institutions participating in the Federal Pell Grant program will take, on average 3 hours per institution to analyze and make programming change needed to identify these recipients with presumed credit balances, increasing burden by 6,189 hours. Additionally, we estimate that proprietary institutions will be required to disburse the presumed credit balance to 38 percent of the 474,126 at proprietary institutions (180,168 recipients), which on average, will take .08 hours (5 minutes) per recipient, increasing burden by 14,413 hours.

We estimate that the 1,523 private non-profit institutions participating in the Federal Pell Grant program will take, on average, 3 hours per institution to analyze and make programming change needed to identify these recipients with presumed credit balances, increasing burden by 4,569 hours. Additionally, we estimate that private non-profit institutions will be required to disburse the presumed credit balance to 28 percent of the 474,126 at proprietary institutions (132,755 recipients) which on average, will take .08 hours (5 minutes) per recipient, increasing burden by 10,620 hours.

We estimate that the 1,883 public institutions participating in the Federal Pell Grant program will take, on average 3 hours per institution to analyze and make programming change needed to identify these recipients with presumed credit balances, increasing burden by 5,649 hours. Additionally, we estimate that proprietary institutions will be required to disburse the presumed credit balance to 34 percent of the 474,126 at proprietary institutions (161,203 recipients) which on average, will take .08 hours (5 minutes) per recipient, increasing burden by 12,896 hours.

Collectively, the final regulatory changes reflected in § 668.164 will increase burden by 54,336 hours in OMB Control Number 1845–NEW3.

COLLECTION OF INFORMATION

Regulatory Section	Information collection	Collection
668.6	This regulatory section will require institutions to report for each student who during an award year began attending or completed a program that prepares a student for gainful employment information needed to identify the student and the location of the institution the student attended, the CIP code for the program, the date the student completed the program, the amounts the student received from private educational loans and the amount from institutional financing plans that the student owes the institution after completing the program, and whether the student matriculated to a higher credentialed program at the same institution or another institution. Institutions will have to disclose information to prospective students about the occupations (by names and SOC codes) that its programs prepare students to enter, along with links to occupational profiles on O–NET or its successor site, or if the number of occupations related to the programs on O–Net is more than ten (10), the institution may provide Web links to a representative sample of the SOCs for which its graduates typically find employment within a few years after completing the program. In addition, the institution will also have to report the on-time graduation rate for students entering the program; the total amount of tuition and fees it charges a student for completing the program within the normal timeframe, the typical costs for books and supplies, and the typical costs for room and board, if applicable. The institution may include information on other costs, such as transportation and living expenses, but it must provide a Web link, or access, to the program cost information the institution makes available under § 668.43(a). Beginning July 1, 2011, the institution must provide prospective students with the placement rate for students completing the program, as determined by the institution's accrediting agency or State requirements, until NCES develops and makes available a new placement rate, and the median loan debt incurred by students who completed the program, as provided by the Secretary, as well as other information the Secretary provided to the institution about the program. Separately, the institution must identify the median loan dept from title IV, HEA program loans, and the median loan debt from private educational loan and institutional financing plans.	OMB 1845–NEW1. This will be a new collection. Separate 60-day and 30-day **Federal Register** notices were published to solicit comment. The burden will increase by 677,160 hours.
668.8	This regulatory section provides for a new conversion ratio when converting clock hours to credit hours. As finalized, this section will include an exemption for affected institutions if the accrediting agency or the State approval agency finds that there are no deficiencies in the institutions policies and procedures for these conversions. Under the exception, the institution will use a lower ratio and could consider student's outside work in the total hours being converted to credit hours. Burden will increase for proprietary, not-for profit and public institutions when they measure whether certain programs when converted from clock hours to credit hours have sufficient credit hours to receive title VI, HEA funds.	OMB 1845–0022. The burden will increase by 18,349 hours.
668.16	This regulatory section will be streamlined by moving most of the elements of satisfactory academic progress (SAP) from this section to § 668.34. Under this proposal, the required elements of SAP will be expanded to provide greater institutional flexibility. Burden will increase for proprietary, not-for profit and public institutions to develop a high school diploma validity process and will increase when certain diplomas are verified.	OMB 1845–0022 and OMB 1845–NEW2. The burden hours attributable to SAP in OMB 1845–0022 will be administratively transferred to OMB 1845–NEW2. Additionally, the burden will increase by 21,982 hours in OMB 1845–0022.
668.22	This regulatory section will consider a student to have withdrawn if the student does not complete all the days in the payment period or period of enrollment that the student was scheduled to complete prior to withdrawing. Burden will increase for individuals, proprietary, not-for profit and public institutions when students in term-based programs with modules or compressed courses withdraw before completing more than 60 percent of the payment period or period of enrollment for which a calculation will be performed to determine the earned and unearned portions of title IV, HEA program assistance.	OMB 1845–0022. The burden will increase by 743,881 hours.
668.34	This regulatory section has been restructured and the satisfactory academic progress requirements have been expanded to allow for more frequent measuring of SAP. Burden will increase for individuals and proprietary, not-for profit and public institutions for institutions to measure academic progress and when academic plans or alternatives will be provided to students who do not meet the institution's academic standards.	OMB 1845–NEW2. This will be a new collection. Separate 60-day and 30-day **Federal Register** notices were published to solicit comment. The burden will increase by 976,856 hours.

COLLECTION OF INFORMATION—Continued

Regulatory Section	Information collection	Collection
668.43	This regulatory section will require that for institutions that enter into written arrangements with other institutions to provide for a portion of its programs' training by the institution that is not providing the degree or certificate, the institution providing the degree or certificate must provide a variety of disclosures to enrolled and prospective students about the written arrangements. Burden will increase for proprietary, not-for profit and public institutions for reporting the details of written arrangements with other institutions offering a portion of a student's program of study.	OMB 1845–0022. The burden will increase by 67,870 hours.
668.55	This regulatory provision will require that all updated applicant data information as a result of verification be reported to the Secretary via the Central Processing System. This also will cover changes made as a result of a dependent student becoming married during the award year when a financial aid administrator exercises their discretion to require marital status change to address an inequity or accurately reflect the student's ability to pay, such change in status due to marriage had previously been prohibited.	OMB 1845–0041. The burden will increase by 386,750 hours.
668.56	This regulation changes from the current five mandatory items included in the verification process to a more flexible list of items that will be selected on an individualized basis. For example, there is no need to verify data that can be obtained directly from the IRS. Burden will increase for individuals; however, the average number of data elements to be verified is expected to be reduced.	OMB 1845–0041. The burden will increase by 612,000 hours.
668.57	This final regulatory provision will modify the requirements related to acceptable documentation required as a part of the verification process. It will allow for the importation of data obtained directly from the IRS that has been unchanged and will provide other flexibilities that will reduce burden; however, due to the large increase in applicants, there will be an overall increase in burden.	OMB 1845–0041. The burden will increase by 612,000 hours.
668.59	This provision eliminates all allowable tolerances and will require an institution to submit to the Department all changes to an applicant's FAFSA as a result of verification. Burden will increase for proprietary, not-for profit and public institutions that will recalculate title IV, HEA awards as a result of data changes due to verification.	OMB 1845–0041. The burden will increase by 2,080,800 hours.
668.144	This regulatory section expands the required elements that a test publisher or a State must submit to the Secretary for approval.	OMB 1845–0049. The burden will increase by 628 hours.
668.150	This provision expands the provisions of the agreement between the Secretary and the ability to benefit test (ATB) publishers or a State. The expanded provisions include requiring test administrators to certify that they have not been decertified, notification requirements when a test administrator is decertified, and providing test anomaly studies every eighteen months rather than every 36 months. Burden will increase for individuals, proprietary, not-for profit and public institutions for the collection and maintenance of certifications, for required notifications, and for submission of test anomaly studies.	OMB 1845–0049. The burden will increase by 10,031 hours.
668.151	This provision will require independent test administrators to submit completed tests for scoring to the test publisher or the State in no more than two business days following the test. Institutions will be required to maintain a record of each individual who takes an ATB test and information about the test administrator. When the test taker has a disability, it will be the institution's responsibility to maintain documentation of the individual's disability and any accommodation provided the individual.	OMB 1845–0049. The burden will increase by 43,166 hours.
668.152	This provision will require that test assessment centers provide either copies of the completed tests or lists of the test takers' scores, including the test administrator's name, address, and any other test administrator identifier to the test publisher or State, as applicable, on a weekly basis.	OMB 1845–0049. The burden will increase by 5,225 hours.
668.164	This provision will require that institutions provide a way for Federal Pell Grant program recipients to obtain or purchase books and supplies by the seventh day of the payment period if certain conditions are met and a credit balance or projected credit balance exists. Burden will increase for proprietary, not-for profit and public institutions to identify and notify Pell recipients with a presumed credit balance about ways to obtain or purchase books and supplies.	OMB 1845–NEW3. This will be a new collection. Separate 60-day and 30-day **Federal Register** notices were published to solicit comment. The burden will increase by 54,336 hours.

Intergovernmental Review

These programs are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, and based on our own review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance: 84.007 FSEOG; 84.032 Federal Family Education Loan Program; 84.033 Federal Work-Study Program; 84.037 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 LEAP; 84.268 William D. Ford Federal Direct Loan Program; 84.376 ACG/SMART; 84.379 TEACH Grant Program)

List of Subjects

34 CFR Part 600

Colleges and universities, Foreign relations, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

34 CFR Part 602

Colleges and universities, Reporting and recordkeeping requirements.

34 CFR Part 603

Colleges and universities, Vocational education.

34 CFR Part 668

Administrative practice and procedure, Aliens, Colleges and universities, Consumer protection, Grant programs-education, Incorporation by reference, Loan programs-education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Part 685

Administrative practice and procedure, Colleges and universities, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Part 686

Administrative practice and procedure, Colleges and universities, Education, Elementary and secondary education, Grant programs-education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 690

Colleges and universities, Education of disadvantaged, Grant programs-education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 691

Colleges and universities, Elementary and secondary education, Grant programs-education, Student aid.

Dated: October 18, 2010.

Arne Duncan,

Secretary of Education.

■ For the reasons discussed in the preamble, the Secretary amends parts 600, 602, 603, 668, 682, 685, 686, 690, and 691 of title 34 of the Code of Federal Regulations as follows:

PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

■ 1. The authority citation for part 600 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1088, 1091, 1094, 1099b, and 1099c, unless otherwise noted.

■ 2. Section 600.2 is amended by:
■ A. Adding, in alphabetical order, the definition of a *Credit hour.*
■ B. Revising the definition of *Recognized occupation.*

The addition and revision read as follows:

§ 600.2 Definitions.

* * * * *

Credit hour: Except as provided in 34 CFR 668.8(k) and (l), a credit hour is an amount of work represented in intended learning outcomes and verified by evidence of student achievement that is an institutionally established equivalency that reasonably approximates not less than—

(1) One hour of classroom or direct faculty instruction and a minimum of two hours of out of class student work each week for approximately fifteen weeks for one semester or trimester hour of credit, or ten to twelve weeks for one quarter hour of credit, or the equivalent amount of work over a different amount of time; or

(2) At least an equivalent amount of work as required in paragraph (1) of this definition for other academic activities as established by the institution including laboratory work, internships, practica, studio work, and other academic work leading to the award of credit hours.

* * * * *

Recognized occupation: An occupation that is—

(1) Identified by a Standard Occupational Classification (SOC) code established by the Office of Management and Budget or an Occupational Information Network O*NET–SOC code established by the Department of Labor and available at *http://online.onetcenter.org* or its successor site; or

(2) Determined by the Secretary in consultation with the Secretary of Labor to be a recognized occupation.

* * * * *

■ 3. Section 600.4 is amended by:
■ A. In paragraph (a)(3), adding the words, "in accordance with § 600.9" immediately after the word "located".
■ B. Revising paragraph (a)(4)(i)(C).

The revision reads as follows:

§ 600.4 Institution of higher education.

(a) * * *
(4) * * *
(i) * * *

(C) That is at least a one academic year training program that leads to a certificate, or other nondegree recognized credential, and prepares students for gainful employment in a recognized occupation; and

* * * * *

§ 600.5 [Amended]

■ 4. Section 600.5(a)(4) is amended by adding the words, "in accordance with § 600.9" immediately after the word "located".

§ 600.6 [Amended]

■ 5. Section 600.6(a)(3) is amended by adding the words, "in accordance with § 600.9" immediately after the word "located".

■ 6. Section 600.9 is added to subpart A to read as follows:

§ 600.9 State authorization.

(a)(1) An institution described under §§ 600.4, 600.5, and 600.6 is legally authorized by a State if the State has a process to review and appropriately act on complaints concerning the institution including enforcing applicable State laws, and the institution meets the provisions of paragraphs (a)(1)(i), (a)(1)(ii), or (b) of this section.

(i)(A) The institution is established by name as an educational institution by a State through a charter, statute, constitutional provision, or other action issued by an appropriate State agency or State entity and is authorized to operate educational programs beyond secondary education, including programs leading to a degree or certificate.

(B) The institution complies with any applicable State approval or licensure

requirements, except that the State may exempt the institution from any State approval or licensure requirements based on the institution's accreditation by one or more accrediting agencies recognized by the Secretary or based upon the institution being in operation for at least 20 years.

(ii) If an institution is established by a State on the basis of an authorization to conduct business in the State or to operate as a nonprofit charitable organization, but not established by name as an educational institution under paragraph (a)(1)(i) of this section, the institution—

(A) By name, must be approved or licensed by the State to offer programs beyond secondary education, including programs leading to a degree or certificate; and

(B) May not be exempt from the State's approval or licensure requirements based on accreditation, years in operation, or other comparable exemption.

(2) The Secretary considers an institution to meet the provisions of paragraph (a)(1) of this section if the institution is authorized by name to offer educational programs beyond secondary education by—

(i) The Federal Government; or

(ii) As defined in 25 U.S.C. 1802(2), an Indian tribe, provided that the institution is located on tribal lands and the tribal government has a process to review and appropriately act on complaints concerning an institution and enforces applicable tribal requirements or laws.

(b)(1) Notwithstanding paragraph (a)(1)(i) and (ii) of this section, an institution is considered to be legally authorized to operate educational programs beyond secondary education if it is exempt from State authorization as a religious institution under the State constitution or by State law.

(2) For purposes of paragraph (b)(1) of this section, a religious institution is an institution that—

(i) Is owned, controlled, operated, and maintained by a religious organization lawfully operating as a nonprofit religious corporation; and

(ii) Awards only religious degrees or certificates including, but not limited to, a certificate of Talmudic studies, an associate of Biblical studies, a bachelor of religious studies, a master of divinity, or a doctor of divinity.

(c) If an institution is offering postsecondary education through distance or correspondence education to students in a State in which it is not physically located or in which it is otherwise subject to State jurisdiction as determined by the State, the institution must meet any State requirements for it to be legally offering postsecondary distance or correspondence education in that State. An institution must be able to document to the Secretary the State's approval upon request.

(Authority: 20 U.S.C. 1001 and 1002)

PART 602—THE SECRETARY'S RECOGNITION OF ACCREDITING AGENCIES

■ 7. The authority citation for part 602 continues to read as follows:

Authority: 20 U.S.C. 1099b, unless otherwise noted.

■ 8. Section 602.24 is amended by adding a new paragraph (f) to read as follows:

§ 602.24 Additional procedures certain institutional accreditors must have.

* * * * *

(f) *Credit-hour policies.* The accrediting agency, as part of its review of an institution for initial accreditation or preaccreditation or renewal of accreditation, must conduct an effective review and evaluation of the reliability and accuracy of the institution's assignment of credit hours.

(1) The accrediting agency meets this requirement if—

(i) It reviews the institution's—

(A) Policies and procedures for determining the credit hours, as defined in 34 CFR 600.2, that the institution awards for courses and programs; and

(B) The application of the institution's policies and procedures to its programs and coursework; and

(ii) Makes a reasonable determination of whether the institution's assignment of credit hours conforms to commonly accepted practice in higher education.

(2) In reviewing and evaluating an institution's policies and procedures for determining credit hour assignments, an accrediting agency may use sampling or other methods in the evaluation, sufficient to comply with paragraph (f)(1)(i)(B) of this section.

(3) The accrediting agency must take such actions that it deems appropriate to address any deficiencies that it identifies at an institution as part of its reviews and evaluations under paragraph (f)(1)(i) and (ii) of this section, as it does in relation to other deficiencies it may identify, subject to the requirements of this part.

(4) If, following the institutional review process under this paragraph (f), the agency finds systemic noncompliance with the agency's policies or significant noncompliance regarding one or more programs at the institution, the agency must promptly notify the Secretary.

* * * * *

PART 603—SECRETARY'S RECOGNITION PROCEDURES FOR STATE AGENCIES

■ 9. The authority citation for part 603 is revised to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1094(c)(4); 38 U.S.C. 3675, unless otherwise noted.

■ 10. Section 603.24 is amended by redesignating paragraph (c) as paragraph (d), adding a new paragraph (c), and revising the authority citation after redesignated paragraph (d) to read as follows:

§ 603.24 Criteria for State agencies.

* * * * *

(c) *Credit-hour policies.* The State agency, as part of its review of an institution for initial approval or renewal of approval, must conduct an effective review and evaluation of the reliability and accuracy of the institution's assignment of credit hours.

(1) The State agency meets this requirement if—

(i) It reviews the institution's—

(A) Policies and procedures for determining the credit hours, as defined in 34 CFR 600.2, that the institution awards for courses and programs; and

(B) The application of the institution's policies and procedures to its programs and coursework; and

(ii) Makes a reasonable determination of whether the institution's assignment of credit hours conforms to commonly accepted practice in higher education.

(2) In reviewing and evaluating an institution's policies and procedures for determining credit hour assignments, a State agency may use sampling or other methods in the evaluation, sufficient to comply with paragraph (c)(1)(i)(B) of this section.

(3) The State agency must take such actions that it deems appropriate to address any deficiencies that it identifies at an institution as part of its reviews and evaluations under paragraph (c)(1)(i) and (ii) of this section, as it does in relation to other deficiencies it may identify, subject to the requirements of this part.

(4) If, following the institutional review process under this paragraph (c), the agency finds systemic noncompliance with the agency's policies or significant noncompliance regarding one or more programs at the institution, the agency must promptly notify the Secretary.

* * * * *

(Authority: 20 U.S.C. 1094(c)(4))

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

■ 11. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1070g, 1085, 1088, 1091, 1092, 1094, 1099c, and 1099c–1, unless otherwise noted.

■ 12. Section 668.2 is amended by:
■ A. In paragraph (a), adding, in alphabetical order, the term "Credit hour".
■ B. In paragraph (b), in the definition of *Full-time student,* adding the words, "including for a term-based program, repeating any coursework previously taken in the program but not including either more than one repetition of a previously passed course, or any repetition of a previously passed course due to the student failing other coursework" immediately before the period in the second sentence.
■ C. In paragraph (b), adding, in alphabetical order, definitions of "Free application for Federal student aid (FAFSA)", "Institutional student information record (ISIR)", and "Student aid report (SAR)".
■ D. In paragraph (b), revising the definitions for "Valid Institutional Student Information Record (valid ISIR)" and "Valid Student Aid Report (valid SAR)".

The additions and revisions read as follows:

§ 668.2 General definitions.

* * * * *

(b) * * *

Free application for Federal student aid (FAFSA): The student aid application provided for under section 483 of the HEA, which is used to determine an applicant's eligibility for the title IV, HEA programs.

* * * * *

Institutional student information record (ISIR): An electronic record that the Secretary transmits to an institution that includes an applicant's—

(1) FAFSA information; and

(2) EFC.

* * * * *

Student aid report (SAR): A report provided to an applicant by the Secretary showing his or her FAFSA information and the amount of his or her EFC.

* * * * *

Valid institutional student information record (valid ISIR): An ISIR on which all the information reported on a student's FAFSA is accurate and complete as of the date the application is signed.

Valid student aid report (valid SAR): A student aid report on which all of the information reported on a student's FAFSA is accurate and complete as of the date the application is signed.

* * * * *

■ 13. Section 668.5 is amended by:
■ A. Revising paragraph (a).
■ B. Revising paragraph (c)(1).
■ C. In paragraph (c)(2), adding the words "offered by the institution that grants the degree or certificate" after the word "program".
■ D. In paragraph (c)(3)(i), removing the words "not more than" and adding the words "or less" after the word "percent".
■ E. In paragraph (c)(3)(ii)(A), removing the words "not more" and adding, in their place, the word "less".
■ F. Adding new paragraph (e).

The addition and revisions read as follows:

§ 668.5 Written arrangements to provide educational programs.

(a) *Written arrangements between eligible institutions.* (1) Except as provided in paragraph (a)(2) of this section, if an eligible institution enters into a written arrangement with another eligible institution, or with a consortium of eligible institutions, under which the other eligible institution or consortium provides part of the educational program to students enrolled in the first institution, the Secretary considers that educational program to be an eligible program if the educational program offered by the institution that grants the degree or certificate otherwise satisfies the requirements of § 668.8.

(2) If the written arrangement is between two or more eligible institutions that are owned or controlled by the same individual, partnership, or corporation, the Secretary considers the educational program to be an eligible program if—

(i) The educational program offered by the institution that grants the degree or certificate otherwise satisfies the requirements of § 668.8; and

(ii) The institution that grants the degree or certificate provides more than 50 percent of the educational program.

* * * * *

(c) * * *

(1) The ineligible institution or organization has not—

(i) Had its eligibility to participate in the title IV, HEA programs terminated by the Secretary;

(ii) Voluntarily withdrawn from participation in the title IV, HEA programs under a termination, show-cause, suspension, or similar type proceeding initiated by the institution's State licensing agency, accrediting agency, guarantor, or by the Secretary;

(iii) Had its certification to participate in the title IV, HEA programs revoked by the Secretary;

(iv) Had its application for re-certification to participate in the title IV, HEA programs denied by the Secretary; or

(v) Had its application for certification to participate in the title IV, HEA programs denied by the Secretary;

* * * * *

(e) *Information made available to students.* If an institution enters into a written arrangement described in paragraph (a), (b), or (c) of this section, the institution must provide the information described in § 668.43(a)(12) to enrolled and prospective students.

* * * * *

■ 14. Section 668.6 is added to subpart A to read as follows:

§ 668.6 Reporting and disclosure requirements for programs that prepare students for gainful employment in a recognized occupation.

(a) *Reporting requirements.* (1) In accordance with procedures established by the Secretary an institution must report information that includes—

(i) For each student who enrolled in a program under § 668.8(c)(3) or (d) during an award year—

(A) Information needed to identify the student and the institution the student attended;

(B) If the student began attending a program during the award year, the name and the Classification of Instructional Program (CIP) code of that program; and

(C) If the student completed a program during the award year—

(*1*) The name and CIP code of that program, and the date the student completed the program;

(*2*) The amounts the student received from private education loans and the amount from institutional financing plans that the student owes the institution upon completing the program; and

(*3*) Whether the student matriculated to a higher credentialed program at the institution or if available, evidence that the student transferred to a higher credentialed program at another institution; and

(ii) For each program, by name and CIP code, offered by the institution under § 668.8(c)(3) or (d), the total number of students that are enrolled in the program at the end of each award year and identifying information for those students.

(2)(i) An institution must report the information required under paragraph (a)(1) of this section—

(A) No later than October 1, 2011 for information from the 2006–07 award year to the extent that the information is available;

(B) No later than October 1, 2011 for information from the 2007–08 through 2009–10 award years; and

(C) No earlier than September 30, but no later than the date established by the Secretary through a notice published in the **Federal Register,** for information from the most recently completed award year.

(ii) For any award year, if an institution is unable to provide all or some of the information required under paragraph (a)(1) of this section, the institution must provide an explanation of why the missing information is not available.

(b) *Disclosures.* (1) For each program offered by an institution under this section, the institution must provide prospective students with—

(i) The occupations (by names and SOC codes) that the program prepares students to enter, along with links to occupational profiles on O*NET or its successor site. If the number of occupations related to the program, as identified by entering the program's full six digit CIP code on the O*NET crosswalk at *http://online.onetcenter.org/crosswalk/* is more than ten, the institution may provide Web links to a representative sample of the identified occupations (by name and SOC code) for which its graduates typically find employment within a few years after completing the program;

(ii) The on-time graduation rate for students completing the program, as provided under paragraph (c) of this section;

(iii) The tuition and fees it charges a student for completing the program within normal time as defined in § 668.41(a), the typical costs for books and supplies (unless those costs are included as part of tuition and fees), and the cost of room and board, if applicable. The institution may include information on other costs, such as transportation and living expenses, but it must provide a Web link, or access, to the program cost information the institutions makes available under § 668.43(a);

(iv) The placement rate for students completing the program, as determined under a methodology developed by the National Center for Education Statistics (NCES) when that rate is available. In the meantime, beginning on July 1, 2011, if the institution is required by its accrediting agency or State to calculate a placement rate on a program basis, it must disclose the rate under this section and identify the accrediting agency or State agency under whose requirements the rate was calculated. If the accrediting agency or State requires an institution to calculate a placement rate at the institutional level or other than a program basis, the institution must use the accrediting agency or State methodology to calculate a placement rate for the program and disclose that rate; and

(v) The median loan debt incurred by students who completed the program as provided by the Secretary, as well as any other information the Secretary provided to the institution about that program. The institution must identify separately the median loan debt from title IV, HEA program loans, and the median loan debt from private educational loans and institutional financing plans.

(2) For each program, the institution must—

(i) Include the information required under paragraph (b)(1) of this section in promotional materials it makes available to prospective students and post this information on its Web site;

(ii) Prominently provide the information required under paragraph (b)(1) of this section in a simple and meaningful manner on the home page of its program Web site, and provide a prominent and direct link on any other Web page containing general, academic, or admissions information about the program, to the single Web page that contains all the required information;

(iii) Display the information required under paragraph (b)(1) of this section on the institution's Web site in an open format that can be retrieved, downloaded, indexed, and searched by commonly used Web search applications. An open format is one that is platform-independent, is machine-readable, and is made available to the public without restrictions that would impede the reuse of that information; and

(iv) Use the disclosure form issued by the Secretary to provide the information in paragraph (b)(1), and other information, when that form is available.

(c) *On-time completion rate.* An institution calculates an on-time completion rate for each program subject to this section by—

(1) Determining the number of students who completed the program during the most recently completed award year;

(2) Determining the number of students in paragraph (c)(1) of this section who completed the program within normal time, as defined under § 668.41(a), regardless of whether the students transferred into the program or changed programs at the institution. For example, the normal time to complete an associate degree is two years and this timeframe applies to all students in the program. If a student transfers into the program, regardless of the number of credits the institution accepts from the student's attendance at the prior institution, those transfer credits have no bearing on the two-year timeframe. The student would still have two years to complete from the date he or she began attending the two-year program. To be counted as completing on time, a student who changes programs at the institution and begins attending the two-year program must complete within the two-year timeframe beginning from the date the student began attending the prior program; and

(3) Dividing the number of students who completed the program within normal time, as determined under paragraph (c)(2) of this section, by the total number of students who completed the program, as determined under paragraph (c)(1) of this section, and multiplying the result by 100.

(Approved by the Office of Management and Budget under control number 1845–NEW1)

(Authority: 20 U.S.C 1001(b), 1002(b) and (c))

■ 15. Section 668.8 is amended by:

■ A. Revising paragraph (c)(3).

■ B. In paragraph (d)(2)(iii), adding the words, "as provided under § 668.6" immediately after the word "occupation."

■ C. In paragraph (d)(3)(iii), adding the words, "as provided under § 668.6" immediately after the word "occupation."

■ D. Revising paragraphs (k) and (l).

The revisions read as follows:

§ 668.8 Eligible program.

* * * * *

(c) * * *

(3) Be at least a one-academic-year training program that leads to a certificate, or other nondegree recognized credential, and prepares students for gainful employment in a recognized occupation.

* * * * *

(k) *Undergraduate educational program in credit hours.* (1) Except as provided in paragraph (k)(2) of this section, if an institution offers an undergraduate educational program in credit hours, the institution must use the formula contained in paragraph (l) of this section to determine whether that program satisfies the requirements contained in paragraph (c)(3) or (d) of this section, and the number of credit hours in that educational program for

purposes of the title IV, HEA programs, unless—

(i) The program is at least two academic years in length and provides an associate degree, a bachelor's degree, a professional degree, or an equivalent degree as determined by the Secretary; or

(ii) Each course within the program is acceptable for full credit toward that institution's associate degree, bachelor's degree, professional degree, or equivalent degree as determined by the Secretary provided that—

(A) The institution's degree requires at least two academic years of study; and

(B) The institution demonstrates that students enroll in, and graduate from, the degree program.

(2) A program is considered to be a clock-hour program for purposes of the title IV, HEA programs if—

(i) Except as provided in paragraph (k)(3) of this section, a program is required to measure student progress in clock hours when—

(A) Receiving Federal or State approval or licensure to offer the program; or

(B) Completing clock hours is a requirement for graduates to apply for licensure or the authorization to practice the occupation that the student is intending to pursue;

(ii) The credit hours awarded for the program are not in compliance with the definition of a credit hour in 34 CFR 600.2; or

(iii) The institution does not provide the clock hours that are the basis for the credit hours awarded for the program or each course in the program and, except as provided in § 668.4(e), requires attendance in the clock hours that are the basis for the credit hours awarded.

(3) The requirements of paragraph (k)(2)(i) of this section do not apply to a program if there is a State or Federal approval or licensure requirement that a limited component of the program must include a practicum, internship, or clinical experience component of the program that must include a minimum number of clock hours.

(l) *Formula.* (1) Except as provided in paragraph (l)(2) of this section, for purposes of determining whether a program described in paragraph (k) of this section satisfies the requirements contained in paragraph (c)(3) or (d) of this section, and of determining the number of credit hours in that educational program with regard to the title IV, HEA programs—

(i) A semester hour must include at least 37.5 clock hours of instruction;

(ii) A trimester hour must include at least 37.5 clock hours of instruction; and

(iii) A quarter hour must include at least 25 clock hours of instruction.

(2) The institution's conversions to establish a minimum number of clock hours of instruction per credit may be less than those specified in paragraph (l)(1) of this section, if the institution's designated accrediting agency, or recognized State agency for the approval of public postsecondary vocational institutions, for participation in the title IV, HEA programs has identified any deficiencies with the institution's policies and procedures, or their implementation, for determining the credit hours, as defined in 34 CFR 600.2, that the institution awards for programs and courses, in accordance with 34 CFR 602.24(f), or, if applicable, 34 CFR 603.24(c), so long as—

(i) The institution's student work outside of class combined with the clock-hours of instruction meet or exceed the numeric requirements in paragraph (l)(1) of this section; and

(ii)(A) A semester hour must include at least 30 clock hours of instruction;

(B) A trimester hour must include at least 30 clock hours of instruction; and

(C) A quarter hour must include at least 20 hours of instruction.

* * * * *

■ 16. Section 668.14 is amended by revising paragraph (b)(22) to read as follows:

§ 668.14 Program participation agreement.

* * * * *

(b) * * *

(22)(i) It will not provide any commission, bonus, or other incentive payment based in any part, directly or indirectly, upon success in securing enrollments or the award of financial aid, to any person or entity who is engaged in any student recruitment or admission activity, or in making decisions regarding the award of title IV, HEA program funds.

(A) The restrictions in paragraph (b)(22) of this section do not apply to the recruitment of foreign students residing in foreign countries who are not eligible to receive Federal student assistance.

(B) For the purpose of paragraph (b)(22) of this section, an employee who receives multiple adjustments to compensation in a calendar year and is engaged in any student enrollment or admission activity or in making decisions regarding the award of title IV, HEA program funds is considered to have received such adjustments based upon success in securing enrollments or the award of financial aid if those adjustments create compensation that is based in any part, directly or indirectly, upon success in securing enrollments or the award of financial aid.

(ii) Notwithstanding paragraph (b)(22)(i) of this section, eligible institutions, organizations that are contractors to eligible institutions, and other entities may make—

(A) Merit-based adjustments to employee compensation provided that such adjustments are not based in any part, directly or indirectly, upon success in securing enrollments or the award of financial aid; and

(B) Profit-sharing payments so long as such payments are not provided to any person who is engaged in student recruitment or admission activity or in making decisions regarding the award of title IV, HEA program funds.

(iii) As used in paragraph (b)(22) of this section,

(A) *Commission, bonus, or other incentive payment* means a sum of money or something of value, other than a fixed salary or wages, paid to or given to a person or an entity for services rendered.

(B) *Securing enrollments or the award of financial aid* means activities that a person or entity engages in at any point in time through completion of an educational program for the purpose of the admission or matriculation of students for any period of time or the award of financial aid to students.

(*1*) These activities include contact in any form with a prospective student, such as, but not limited to—contact through preadmission or advising activities, scheduling an appointment to visit the enrollment office or any other office of the institution, attendance at such an appointment, or involvement in a prospective student's signing of an enrollment agreement or financial aid application.

(*2*) These activities do not include making a payment to a third party for the provision of student contact information for prospective students provided that such payment is not based on—

(*i*) Any additional conduct or action by the third party or the prospective students, such as participation in preadmission or advising activities, scheduling an appointment to visit the enrollment office or any other office of the institution or attendance at such an appointment, or the signing, or being involved in the signing, of a prospective student's enrollment agreement or financial aid application; or

(*ii*) The number of students (calculated at any point in time of an educational program) who apply for

enrollment, are awarded financial aid, or are enrolled for any period of time, including through completion of an educational program.

(C) *Entity or person engaged in any student recruitment or admission activity or in making decisions about the award of financial aid* means—

(*1*) With respect to an entity engaged in any student recruitment or admission activity or in making decisions about the award of financial aid, any institution or organization that undertakes the recruiting or the admitting of students or that makes decisions about and awards title IV, HEA program funds; and

(*2*) With respect to a person engaged in any student recruitment or admission activity or in making decisions about the award of financial aid, any employee who undertakes recruiting or admitting of students or who makes decisions about and awards title IV, HEA program funds, and any higher level employee with responsibility for recruitment or admission of students, or making decisions about awarding title IV, HEA program funds.

(D) *Enrollment* means the admission or matriculation of a student into an eligible institution.

* * * * *

■ 17. Section 668.16 is amended by:
■ A. Revising paragraph (e).
■ B. In paragraph (n) introductory text, removing the word "and" that appears after the punctuation";".
■ C. In paragraph (o)(2), removing the punctuation "." and adding, in its place, the punctuation and word "; and".
■ D. Adding paragraph (p).
■ E. Revising the OMB control number at the end of the section.

The revisions and addition read as follows:

§ 668.16 Standards of administrative capability.

* * * * *

(e) For purposes of determining student eligibility for assistance under a title IV, HEA program, establishes, publishes, and applies reasonable standards for measuring whether an otherwise eligible student is maintaining satisfactory academic progress in his or her educational program. The Secretary considers an institution's standards to be reasonable if the standards are in accordance with the provisions specified in § 668.34.

* * * * *

(p) Develops and follows procedures to evaluate the validity of a student's high school completion if the institution or the Secretary has reason to believe that the high school diploma is not valid or was not obtained from an entity that provides secondary school education.

(Approved by the Office of Management and Budget under control number 1845–0022)

* * * * *

■ 18. Section 668.22 is amended by:
■ A. Redesignating paragraphs (a)(2) through (a)(5) as paragraphs (a)(3) through (a)(6), respectively.
■ B. Adding new paragraph (a)(2).
■ C. In newly redesignated paragraph (a)(5), removing the citation "(a)(5)" and adding, in its place, the citation "(a)(6)".
■ D. In newly redesignated paragraph (a)(6)(ii)(A)(*2*), removing the citation "(a)(5)(iii)" and adding, in its place, the citation "(a)(6)(iii)".
■ E. In newly redesignated paragraph (a)(6)(ii)(B)(*2*), removing the citation "(a)(5)(iii)" and adding, in its place, the citation "(a)(6)(iii)".
■ F. In newly redesignated paragraph (a)(6)(ii)(B)(*3*), removing the citation "(a)(5)(iii)" and adding, in its place, the citation "(a)(6)(iii)".
■ G. In newly redesignated paragraph (a)(6)(iii)(A)(*1*), removing the citation "(a)(5)(ii)(A)(*2*)" and adding, in its place, the citation "(a)(6)(ii)(A)(*2*)".
■ H. In newly redesignated paragraph (a)(6)(iii)(A)(*5*), removing the citation "(a)(5)(iii)(C)" and adding, in its place, the citation "(a)(6)(iii)(C)".
■ I. In newly redesignated paragraph (a)(6)(iii)(B), removing the citation "(a)(5)(iii)(A)" and adding, in its place, the citation "(a)(6)(iii)(A)".
■ J. In newly redesignated paragraph (a)(6)(iv), removing the citation "(a)(5)(iii)" and adding, in its place, the citation "(a)(6)(iii)".
■ K. Revising paragraph (b)(3).
■ L. Removing paragraph (c)(3)(ii) and redesignating paragraph (c)(3)(i) as paragraph (c)(3).
■ M. Revising paragraph (f)(2).
■ N. In the introductory text of paragraph (j)(2), removing the first word "An" and adding, in its place, the words "For an institution that is not required to take attendance, an".
■ O. In paragraph (l)(3), adding the words "for an institution that is not required to take attendance" after the words "date of the institution's determination that the student withdrew".
■ P. Adding paragraphs (l)(6), (l)(7), and (l)(8).

The additions and revisions read as follows:

§ 668.22 Treatment of title IV funds when a student withdraws.

* * * * *

(a) * * *

(2)(i) Except as provided in paragraphs (a)(2)(ii) and (a)(2)(iii) of this section, a student is considered to have withdrawn from a payment period or period of enrollment if—

(A) In the case of a program that is measured in credit hours, the student does not complete all the days in the payment period or period of enrollment that the student was scheduled to complete;

(B) In the case of a program that is measured in clock hours, the student does not complete all of the clock hours and weeks of instructional time in the payment period or period of enrollment that the student was scheduled to complete; or

(C) For a student in a nonterm or nonstandard-term program, the student is not scheduled to begin another course within a payment period or period of enrollment for more than 45 calendar days after the end of the module the student ceased attending, unless the student is on an approved leave of absence, as defined in paragraph (d) of this section.

(ii)(A) Notwithstanding paragraph (a)(2)(i)(A) and (a)(2)(i)(B) of this section, for a payment period or period of enrollment in which courses in the program are offered in modules—

(*1*) A student is not considered to have withdrawn if the institution obtains written confirmation from the student at the time that would have been a withdrawal of the date that he or she will attend a module that begins later in the same payment period or period of enrollment; and

(*2*) For nonterm and nonstandard-term programs, that module begins no later than 45 calendar days after the end of the module the student ceased attending.

(B) If an institution has obtained the written confirmation of future attendance in accordance with paragraph (a)(2)(ii)(A) of this section—

(*1*) A student may change the date of return to a module that begins later in the same payment period or period of enrollment, provided that the student does so in writing prior to the return date that he or she had previously confirmed; and

(*2*) For nonterm and nonstandard-term programs, the later module that he or she will attend begins no later than 45 calendar days after the end of module the student ceased attending.

(C) If an institution obtains written confirmation of future attendance in accordance with paragraph (a)(2)(ii)(A) and, if applicable, (a)(2)(ii)(B) of this section, but the student does not return as scheduled—

(*1*) The student is considered to have withdrawn from the payment period or period of enrollment; and

(*2*) The student's withdrawal date and the total number of calendar days in the payment period or period of enrollment would be the withdrawal date and total number of calendar days that would have applied if the student had not provided written confirmation of a future date of attendance in accordance with paragraph (a)(2)(ii)(A) of this section.

(iii)(A) If a student withdraws from a term-based credit-hour program offered in modules during a payment period or period of enrollment and reenters the same program prior to the end of the period, subject to conditions established by the Secretary, the student is eligible to receive any title IV, HEA program funds for which he or she was eligible prior to withdrawal, including funds that were returned by the institution or student under the provisions of this section, provided the student's enrollment status continues to support the full amount of those funds.

(B) In accordance with § 668.4(f), if a student withdraws from a clock-hour or nonterm credit hour program during a payment period or period of enrollment and then reenters the same program within 180 calendar days, the student remains in that same period when he or she returns and, subject to conditions established by the Secretary, is eligible to receive any title IV, HEA program funds for which he or she was eligible prior to withdrawal, including funds that were returned by the institution or student under the provisions of this section.

* * * * *

(b) * * *

(3)(i) An institution is required to take attendance if—

(A) An outside entity (such as the institution's accrediting agency or a State agency) has a requirement that the institution take attendance;

(B) The institution itself has a requirement that its instructors take attendance; or

(C) The institution or an outside entity has a requirement that can only be met by taking attendance or a comparable process, including, but not limited to, requiring that students in a program demonstrate attendance in the classes of that program, or a portion of that program.

(ii) If, in accordance with paragraph (b)(3)(i) of this section, an institution is required to take attendance or requires that attendance be taken for only some students, the institution must use its attendance records to determine a withdrawal date in accordance with paragraph (b)(1) of this section for those students.

(iii)(A) If, in accordance with paragraph (b)(3)(i) of this section, an institution is required to take attendance, or requires that attendance be taken, for a limited period, the institution must use its attendance records to determine a withdrawal date in accordance with paragraph (b)(3)(i) of this section for that limited period.

(B) A student in attendance the last time attendance is required to be taken during the limited period identified in paragraph (b)(3)(iii)(A) of this section who subsequently stops attending during the payment period will be treated as a student for whom the institution was not required to take attendance.

(iv) If an institution is required to take attendance or requires that attendance be taken, on only one specified day to meet a census reporting requirement, the institution is not considered to take attendance.

* * * * *

(f) * * *

(2)(i) The total number of calendar days in a payment period or period of enrollment includes all days within the period that the student was scheduled to complete, except that scheduled breaks of at least five consecutive days are excluded from the total number of calendar days in a payment period or period of enrollment and the number of calendar days completed in that period.

(ii) The total number of calendar days in a payment period or period of enrollment does not include—

(A) Days in which the student was on an approved leave of absence; or

(B) For a payment period or period of enrollment in which any courses in the program are offered in modules, any scheduled breaks of at least five consecutive days when the student is not scheduled to attend a module or other course offered during that period of time.

* * * * *

(l) * * *

(6) A program is "offered in modules" if a course or courses in the program do not span the entire length of the payment period or period of enrollment.

(7)(i) "Academic attendance" and "attendance at an academically-related activity"—

(A) Include, but are not limited to—

(*1*) Physically attending a class where there is an opportunity for direct interaction between the instructor and students;

(*2*) Submitting an academic assignment;

(*3*) Taking an exam, an interactive tutorial, or computer-assisted instruction;

(*4*) Attending a study group that is assigned by the institution;

(*5*) Participating in an online discussion about academic matters; and

(*6*) Initiating contact with a faculty member to ask a question about the academic subject studied in the course; and

(B) Do not include activities where a student may be present, but not academically engaged, such as—

(*1*) Living in institutional housing;

(*2*) Participating in the institution's meal plan;

(*3*) Logging into an online class without active participation; or

(*4*) Participating in academic counseling or advisement.

(ii) A determination of "academic attendance" or "attendance at an academically-related activity" must be made by the institution; a student's certification of attendance that is not supported by institutional documentation is not acceptable.

(8) A program is a nonstandard-term program if the program is a term-based program that does not qualify under 34 CFR 690.63(a)(1) or (a)(2) to calculate Federal Pell Grant payments under 34 CFR 690.63(b) or (c).

* * * * *

■ 19. Section 668.25 is amended by:

■ A. In paragraph (c)(2)(v), removing the word "and".

■ B. In paragraph (c)(2)(vi), adding the word "and" after the punctuation ";".

■ C. Adding paragraph (c)(2)(vii).

The addition reads as follows:

§ 668.25 Contracts between an institution and a third party servicer.

* * * * *

(c) * * *

(2) * * *

(vii) Payment of any commission, bonus, or other incentive payment based in any part, directly or indirectly, upon success in securing enrollments or the award of financial aid to any person or entity engaged in any student recruitment or admission activity or in making decisions regarding the award of title IV, HEA program funds.

* * * * *

■ 20. Section 668.32 is amended by:

■ A. In paragraph (e)(3), removing the word "or" that appears after the punctuation ";".

■ B. In paragraph (e)(4)(ii), removing the punctuation "." and adding, in its place, the punctuation and word "; or".

■ C. Adding new paragraph (e)(5).

■ D. Revising paragraph (f).

The addition and revision read as follows:

§ 668.32 Student eligibility—general.

* * * * *

(e) * * *

(5) Has been determined by the institution to have the ability to benefit from the education or training offered by the institution based on the satisfactory completion of 6 semester hours, 6 trimester hours, 6 quarter hours, or 225 clock hours that are applicable toward a degree or certificate offered by the institution.

(f) Maintains satisfactory academic progress in his or her course of study according to the institution's published standards of satisfactory academic progress that meet the requirements of § 668.34.

* * * * *

■ 21. Section 668.34 is revised to read as follows:

§ 668.34 Satisfactory academic progress.

(a) *Satisfactory academic progress policy.* An institution must establish a reasonable satisfactory academic progress policy for determining whether an otherwise eligible student is making satisfactory academic progress in his or her educational program and may receive assistance under the title IV, HEA programs. The Secretary considers the institution's policy to be reasonable if—

(1) The policy is at least as strict as the policy the institution applies to a student who is not receiving assistance under the title IV, HEA programs;

(2) The policy provides for consistent application of standards to all students within categories of students, *e.g.,* full-time, part-time, undergraduate, and graduate students, and educational programs established by the institution;

(3) The policy provides that a student's academic progress is evaluated—

(i) At the end of each payment period if the educational program is either one academic year in length or shorter than an academic year; or

(ii) For all other educational programs, at the end of each payment period or at least annually to correspond with the end of a payment period;

(4)(i) The policy specifies the grade point average (GPA) that a student must achieve at each evaluation, or if a GPA is not an appropriate qualitative measure, a comparable assessment measured against a norm; and

(ii) If a student is enrolled in an educational program of more than two academic years, the policy specifies that at the end of the second academic year, the student must have a GPA of at least a "C" or its equivalent, or have academic standing consistent with the institution's requirements for graduation;

(5)(i) The policy specifies the pace at which a student must progress through his or her educational program to ensure that the student will complete the program within the maximum timeframe, as defined in paragraph (b) of this section, and provides for measurement of the student's progress at each evaluation; and

(ii) An institution calculates the pace at which the student is progressing by dividing the cumulative number of hours the student has successfully completed by the cumulative number of hours the student has attempted. In making this calculation, the institution is not required to include remedial courses;

(6) The policy describes how a student's GPA and pace of completion are affected by course incompletes, withdrawals, or repetitions, or transfers of credit from other institutions. Credit hours from another institution that are accepted toward the student's educational program must count as both attempted and completed hours;

(7) Except as provided in paragraphs (c) and (d) of this section, the policy provides that, at the time of each evaluation, a student who has not achieved the required GPA, or who is not successfully completing his or her educational program at the required pace, is no longer eligible to receive assistance under the title IV, HEA programs;

(8) If the institution places students on financial aid warning, or on financial aid probation, as defined in paragraph (b) of this section, the policy describes these statuses and that—

(i) A student on financial aid warning may continue to receive assistance under the title IV, HEA programs for one payment period despite a determination that the student is not making satisfactory academic progress. Financial aid warning status may be assigned without an appeal or other action by the student; and

(ii) A student on financial aid probation may receive title IV, HEA program funds for one payment period. While a student is on financial aid probation, the institution may require the student to fulfill specific terms and conditions such as taking a reduced course load or enrolling in specific courses. At the end of one payment period on financial aid probation, the student must meet the institution's satisfactory academic progress standards or meet the requirements of the academic plan developed by the institution and the student to qualify for further title IV, HEA program funds;

(9) If the institution permits a student to appeal a determination by the institution that he or she is not making satisfactory academic progress, the policy describes—

(i) How the student may reestablish his or her eligibility to receive assistance under the title IV, HEA programs;

(ii) The basis on which a student may file an appeal: The death of a relative, an injury or illness of the student, or other special circumstances; and

(iii) Information the student must submit regarding why the student failed to make satisfactory academic progress, and what has changed in the student's situation that will allow the student to demonstrate satisfactory academic progress at the next evaluation;

(10) If the institution does not permit a student to appeal a determination by the institution that he or she is not making satisfactory academic progress, the policy must describe how the student may reestablish his or her eligibility to receive assistance under the title IV, HEA programs; and

(11) The policy provides for notification to students of the results of an evaluation that impacts the student's eligibility for title IV, HEA program funds.

(b) *Definitions.* The following definitions apply to the terms used in this section:

Appeal. Appeal means a process by which a student who is not meeting the institution's satisfactory academic progress standards petitions the institution for reconsideration of the student's eligibility for title IV, HEA program assistance.

Financial aid probation. Financial aid probation means a status assigned by an institution to a student who fails to make satisfactory academic progress and who has appealed and has had eligibility for aid reinstated.

Financial aid warning. Financial aid warning means a status assigned to a student who fails to make satisfactory academic progress at an institution that evaluates academic progress at the end of each payment period.

Maximum timeframe. Maximum timeframe means—

(1) For an undergraduate program measured in credit hours, a period that is no longer than 150 percent of the published length of the educational program, as measured in credit hours;

(2) For an undergraduate program measured in clock hours, a period that is no longer than 150 percent of the published length of the educational program, as measured by the cumulative number of clock hours the student is required to complete and expressed in calendar time; and

(3) For a graduate program, a period defined by the institution that is based on the length of the educational program.

(c) *Institutions that evaluate satisfactory academic progress at the end of each payment period.* (1) An institution that evaluates satisfactory academic progress at the end of each payment period and determines that a student is not making progress under its policy may nevertheless disburse title IV, HEA program funds to the student under the provisions of paragraph (c)(2), (c)(3), or (c)(4) of this section.

(2) For the payment period following the payment period in which the student did not make satisfactory academic progress, the institution may—

(i) Place the student on financial aid warning, and disburse title IV, HEA program funds to the student; or

(ii) Place a student directly on financial aid probation, following the procedures outlined in paragraph (d)(2) of this section and disburse title IV, HEA program funds to the student.

(3) For the payment period following a payment period during which a student was on financial aid warning, the institution may place the student on financial aid probation, and disburse title IV, HEA program funds to the student if—

(i) The institution evaluates the student's progress and determines that student did not make satisfactory academic progress during the payment period the student was on financial aid warning;

(ii) The student appeals the determination; and

(iii)(A) The institution determines that the student should be able to meet the institution's satisfactory academic progress standards by the end of the subsequent payment period; or

(B) The institution develops an academic plan for the student that, if followed, will ensure that the student is able to meet the institution's satisfactory academic progress standards by a specific point in time.

(4) A student on financial aid probation for a payment period may not receive title IV, HEA program funds for the subsequent payment period unless the student makes satisfactory academic progress or the institution determines that the student met the requirements specified by the institution in the academic plan for the student.

(d) *Institutions that evaluate satisfactory academic progress annually or less frequently than at the end of each payment period.* (1) An institution that evaluates satisfactory academic progress annually or less frequently than at the end of each payment period and determines that a student is not making progress under its policy may nevertheless disburse title IV, HEA program funds to the student under the provisions of paragraph (d)(2) or (d)(3) of this section.

(2) The institution may place the student on financial aid probation and may disburse title IV, HEA program funds to the student for the subsequent payment period if—

(i) The institution evaluates the student and determines that the student is not making satisfactory academic progress;

(ii) The student appeals the determination; and

(iii)(A) The institution determines that the student should be able to be make satisfactory academic progress during the subsequent payment period and meet the institution's satisfactory academic progress standards at the end of that payment period; or

(B) The institution develops an academic plan for the student that, if followed, will ensure that the student is able to meet the institution's satisfactory academic progress standards by a specific point in time.

(3) A student on financial aid probation for a payment period may not receive title IV, HEA program funds for the subsequent payment period unless the student makes satisfactory academic progress or the institution determines that the student met the requirements specified by the institution in the academic plan for the student.

(Authority: 20 U.S.C. 1091(d))

■ 22. Section 668.43 is amended by:

■ A. In paragraph (a)(10)(ii), removing the word "and" that appears after the punctuation ";".

■ B. In paragraph (a)(11)(ii), removing the punctuation "." and adding, in its place, the punctuation and word "; and".

■ C. Adding paragraph (a)(12).

■ D. Revising paragraph (b).

The addition and revision read as follows:

§ 668.43 Institutional information.

(a) * * *

(12) A description of written arrangements the institution has entered into in accordance with § 668.5, including, but not limited to, information on—

(i) The portion of the educational program that the institution that grants the degree or certificate is not providing;

(ii) The name and location of the other institutions or organizations that are providing the portion of the educational program that the institution that grants the degree or certificate is not providing;

(iii) The method of delivery of the portion of the educational program that the institution that grants the degree or certificate is not providing; and

(iv) Estimated additional costs students may incur as the result of enrolling in an educational program that is provided, in part, under the written arrangement.

(b) The institution must make available for review to any enrolled or prospective student upon request, a copy of the documents describing the institution's accreditation and its State, Federal, or tribal approval or licensing. The institution must also provide its students or prospective students with contact information for filing complaints with its accreditor and with its State approval or licensing entity and any other relevant State official or agency that would appropriately handle a student's complaint.

* * * * *

■ 23. Subpart E of part 668 is revised to read as follows:

Subpart E—Verification and Updating of Student Aid Application Information

Sec.

Subpart E—Verification and Updating of Student Aid Application Information

§ 668.51 General.

(a) *Scope and purpose.* The regulations in this subpart govern the verification by institutions of information submitted by applicants for student financial assistance under the subsidized student financial assistance programs.

(b) *Applicant responsibility.* If the Secretary or the institution requests documents or information from an applicant under this subpart, the applicant must provide the specified documents or information.

(c) *Foreign schools.* The Secretary exempts from the provisions of this subpart participating institutions that are not located in a State.

(Authority: 20 U.S.C. 1094)

§ 668.52 Definitions.

The following definitions apply to this subpart:

Specified year: (1) The calendar year preceding the first calendar year of an award year, *i.e.,* the base year; or

(2) The year preceding the year described in paragraph (1) of this definition.

Subsidized student financial assistance programs: Title IV, HEA programs for which eligibility is determined on the basis of an applicant's EFC. These programs include the Federal Pell Grant, Federal Supplemental Educational Opportunity Grant (FSEOG), Federal Work-Study (FWS), Federal Perkins Loan, and Direct Subsidized Loan programs.

Unsubsidized student financial assistance programs: Title IV, HEA programs for which eligibility is not based on an applicant's EFC. These programs include the Teacher Education Assistance for College and Higher Education (TEACH) Grant, Direct Unsubsidized Loan, and Direct PLUS Loan programs.

(Authority: 20 U.S.C. 1094)

§ 668.53 Policies and procedures.

(a) An institution must establish and use written policies and procedures for verifying an applicant's FAFSA information in accordance with the provisions of this subpart. These policies and procedures must include—

(1) The time period within which an applicant must provide any documentation requested by the institution in accordance with § 668.57;

(2) The consequences of an applicant's failure to provide the requested documentation within the specified time period;

(3) The method by which the institution notifies an applicant of the results of its verification if, as a result of verification, the applicant's EFC changes and results in a change in the amount of the applicant's assistance under the title IV, HEA programs;

(4) The procedures the institution will follow itself or the procedures the institution will require an applicant to follow to correct FAFSA information determined to be in error; and

(5) The procedures for making referrals under § 668.16(g).

(b) An institution's procedures must provide that it will furnish, in a timely manner, to each applicant whose FAFSA information is selected for verification a clear explanation of—

(1) The documentation needed to satisfy the verification requirements; and

(2) The applicant's responsibilities with respect to the verification of FAFSA information, including the deadlines for completing any actions required under this subpart and the consequences of failing to complete any required action.

(c) An institution's procedures must provide that an applicant whose FAFSA information is selected for verification is required to complete verification before the institution exercises any authority under section 479A(a) of the HEA to make changes to the applicant's cost of attendance or to the values of the data items required to calculate the EFC.

(Approved by the Office of Management and Budget under control number 1845–0041)

(Authority: 20 U.S.C. 1094)

§ 668.54 Selection of an applicant's FAFSA information for verification.

(a) *General requirements.* (1) Except as provided in paragraph (b) of this section, an institution must require an applicant whose FAFSA information is selected for verification by the Secretary, to verify the information specified by the Secretary pursuant to § 668.56.

(2) If an institution has reason to believe that an applicant's FAFSA information is inaccurate, it must verify the accuracy of that information.

(3) An institution may require an applicant to verify any FAFSA information that it specifies.

(4) If an applicant is selected to verify FAFSA information under paragraph (a)(1) of this section, the institution must require the applicant to verify the information as specified in § 668.56 if the applicant is selected for a subsequent verification of FAFSA information, except that the applicant is not required to provide documentation for the FAFSA information previously verified for the applicable award year to the extent that the FAFSA information previously verified remains unchanged.

(b) *Exclusions from verification.* (1) An institution need not verify an applicant's FAFSA information if—

(i) The applicant dies;

(ii) The applicant does not receive assistance under the title IV, HEA programs for reasons other than failure to verify FAFSA information;

(iii) The applicant is eligible to receive only unsubsidized student financial assistance; or

(iv) The applicant who transfers to the institution, had previously completed verification at the institution from which he or she transferred, and applies for assistance based on the same FAFSA information used at the previous institution, if the current institution obtains a letter from the previous institution—

(A) Stating that it has verified the applicant's information; and

(B) Providing the transaction number of the applicable valid ISIR.

(2) Unless the institution has reason to believe that the information reported by a dependent student is incorrect, it need not verify the applicant's parents' FAFSA information if—

(i) The parents are residing in a country other than the United States and cannot be contacted by normal means of communication;

(ii) The parents cannot be located because their contact information is unknown and cannot be obtained by the applicant; or

(iii) Both of the applicant's parents are mentally incapacitated.

(3) Unless the institution has reason to believe that the information reported by an independent student is incorrect, it need not verify the applicant's spouse's information if—

(i) The spouse is deceased;

(ii) The spouse is mentally incapacitated;

(iii) The spouse is residing in a country other than the United States and cannot be contacted by normal means of communication; or

(iv) The spouse cannot be located because his or her contact information is unknown and cannot be obtained by the applicant.

(Approved by the Office of Management and Budget under control number 1845–0041)

(Authority: 20 U.S.C. 1091, 1094)

§ 668.55 Updating information.

(a) If an applicant's dependency status changes at any time during the award year, the applicant must update FAFSA information, except when the update is due to a change in his or her marital status.

(b)(1) An applicant who is selected for verification of the number of persons in his or her household (household size) or the number of those in the household who are attending postsecondary institutions (number in college) must update those items to be correct as of the date of verification, except when the update is due to a change in his or her marital status.

(2) Notwithstanding paragraph (b)(1) of this section, an applicant is not required to provide documentation of household size or number in college during a subsequent verification of either item if the information has not changed.

(c) An institution may require an applicant to update FAFSA information under paragraph (a) or (b) of this section for a change in the applicant's marital status if the institution determines the

update is necessary to address an inequity or to reflect more accurately the applicant's ability to pay.

(Approved by the Office of Management and Budget under control number 1845–0041)

(Authority: 20 U.S.C. 1094)

§ 668.56 Information to be verified.

(a) For each award year the Secretary publishes in the **Federal Register** notice the FAFSA information that an institution and an applicant may be required to verify.

(b) For each applicant whose FAFSA information is selected for verification by the Secretary, the Secretary specifies the specific information under paragraph (a) of this section that the applicant must verify.

(Approved by the Office of Management and Budget under control number 1845–0041)

(Authority: 20 U.S.C. 1094, 1095)

§ 668.57 Acceptable documentation.

If an applicant is selected to verify any of the following information, an institution must obtain the specified documentation.

(a) *Adjusted Gross Income (AGI), income earned from work, or U.S. income tax paid.* (1) Except as provided in paragraphs (a)(2), (a)(3), and (a)(4) of this section, an institution must require an applicant selected for verification of AGI, income earned from work or U.S. income tax paid to submit to it—

(i) A copy of the income tax return or an Internal Revenue Service (IRS) form that lists tax account information of the applicant, his or her spouse, or his or her parents, as applicable for the specified year. The copy of the return must include the signature (which need not be an original) of the filer of the return or of one of the filers of a joint return;

(ii) For a dependent student, a copy of each IRS Form W–2 for the specified year received by the parent whose income is being taken into account if—

(A) The parents filed a joint return; and

(B) The parents are divorced or separated or one of the parents has died; and

(iii) For an independent student, a copy of each IRS Form W–2 for the specified year he or she received if the independent student—

(A) Filed a joint return; and

(B) Is a widow or widower, or is divorced or separated.

(2) An institution may accept, in lieu of an income tax return or an IRS form that lists tax account information, the information reported for an item on the applicant's FAFSA for the specified year if the Secretary has identified that item as having been obtained from the IRS and not having been changed.

(3) An institution must accept, in lieu of an income tax return or an IRS form that lists tax account information, the documentation set forth in paragraph (a)(4) of this section if the individual for the specified year—

(i) Has not filed and, under IRS rules, or other applicable government agency rules, is not required to file an income tax return;

(ii) Is required to file a U.S. tax return and has been granted a filing extension by the IRS; or

(iii) Has requested a copy of the tax return or an IRS form that lists tax account information, and the IRS or a government of a U.S. territory or commonwealth or a foreign central government cannot locate the return or provide an IRS form that lists tax account information.

(4) An institution must accept—

(i) For an individual described in paragraph (a)(3)(i) of this section, a statement signed by that individual certifying that he or she has not filed and is not required to file an income tax return for the specified year and certifying for that year that individual's—

(A) Sources of income earned from work as stated on the FAFSA; and

(B) Amounts of income from each source. In lieu of a certification of these amounts of income, the applicant may provide a copy of his or her IRS Form W–2 for each source listed under paragraph (a)(4)(i)(A) of this section;

(ii) For an individual described in paragraph (a)(3)(ii) of this section—

(A) A copy of the IRS Form 4868, "Application for Automatic Extension of Time to File U.S. Individual Income Tax Return," that the individual filed with the IRS for the specified year, or a copy of the IRS's approval of an extension beyond the automatic six-month extension if the individual requested an additional extension of the filing time; and

(B) A copy of each IRS Form W–2 that the individual received for the specified year, or for a self-employed individual, a statement signed by the individual certifying the amount of the AGI for the specified year; and

(iii) For an individual described in paragraph (a)(3)(iii) of this section—

(A) A copy of each IRS Form W–2 that the individual received for the specified year; or

(B) For an individual who is self-employed or has filed an income tax return with a government of a U. S. territory or commonwealth, or a foreign central government, a statement signed by the individual certifying the amount of AGI and taxes paid for the specified year.

(5) An institution may require an individual described in paragraph (a)(3)(ii) of this section to provide to it a copy of his or her completed and signed income tax return when filed. If an institution receives the copy of the return, it must reverify the AGI and taxes paid by the applicant and his or her spouse or parents.

(6) If an individual who is required to submit an IRS Form W–2, under paragraph (a) of this section, is unable to obtain one in a timely manner, the institution may permit that individual to set forth, in a statement signed by the individual, the amount of income earned from work, the source of that income, and the reason that the IRS Form W–2 is not available in a timely manner.

(7) For the purpose of this section, an institution may accept in lieu of a copy of an income tax return signed by the filer of the return or one of the filers of a joint return, a copy of the filer's return that includes the preparer's Social Security Number, Employer Identification Number or the Preparer Tax Identification Number and has been signed, stamped, typed, or printed with the name and address of the preparer of the return.

(b) *Number of family members in household.* An institution must require an applicant selected for verification of the number of family members in the household to submit to it a statement signed by both the applicant and one of the applicant's parents if the applicant is a dependent student, or only the applicant if the applicant is an independent student, listing the name and age of each family member in the household and the relationship of that household member to the applicant.

(c) *Number of family household members enrolled in eligible postsecondary institutions.* (1) An institution must require an applicant selected for verification of the number of household members in the applicant's family enrolled on at least a half-time basis in eligible postsecondary institutions to submit a statement signed by both the applicant and one of the applicant's parents, if the applicant is a dependent student, or by only the applicant if the applicant is an independent student, listing—

(i) The name of each family member who is or will be attending an eligible postsecondary educational institution as at least a half-time student in the award year;

(ii) The age of each student; and

(iii) The name of the institution that each student is or will be attending.

(2) If the institution has reason to believe that an applicant's FAFSA information or the statement provided under paragraph (c)(1) of this section regarding the number of family household members enrolled in eligible postsecondary institutions is inaccurate, the institution must obtain a statement from each institution named by the applicant in response to the requirement of paragraph (c)(1)(iii) of this section that the household member in question is or will be attending the institution on at least a half-time basis, unless—

(i) The institution the student is attending determines that such a statement is not available because the household member in question has not yet registered at the institution he or she plans to attend; or

(ii) The institution has information indicating that the student will be attending the same institution as the applicant.

(d) *Other information.* If an applicant is selected to verify other information specified in the annual **Federal Register** notice, the applicant must provide the documentation specified for that information in the **Federal Register** notice.

(Approved by the Office of Management and Budget under control number 1845–0041)

(Authority: 20 U.S.C. 1094)

§ 668.58 Interim disbursements.

(a)(1) If an institution has reason to believe that an applicant's FAFSA information is inaccurate, until the information is verified and any corrections are made in accordance with § 668.59(a), the institution may not—

(i) Disburse any Federal Pell Grant, FSEOG, or Federal Perkins Loan Program funds to the applicant;

(ii) Employ or allow an employer to employ the applicant in its FWS Program; or

(iii) Originate a Direct Subsidized Loan, or disburse any such loan proceeds for any previously certified originated Direct Subsidized Loan to the applicant.

(2) If an institution does not have reason to believe that an applicant's FAFSA information is inaccurate prior to verification, the institution may—

(i)(A) Withhold payment of Federal Pell Grant, Federal Perkins Loan, or FSEOG Program funds for the applicant; or

(B) Make one disbursement from each of the Federal Pell Grant, Federal Perkins Loan, or FSEOG Program funds for the applicant's first payment period of the award year;

(ii) Employ or allow an employer to employ that applicant, once he or she is an eligible student, under the FWS Program for the first 60 consecutive days after the student's enrollment in that award year; or

(iii)(A) Withhold origination of the applicant's Direct Subsidized Loan; or

(B) Originate the Direct Subsidized Loan provided that the institution does not disburse Subsidized Stafford Loan or Direct Subsidized Loan proceeds.

(3) If, after verification, an institution determines that changes to an applicant's information will not change the amount the applicant would receive under a title IV, HEA program, the institution—

(i) Must ensure corrections are made in accordance with § 668.59(a); and

(ii) May prior to receiving the corrected valid SAR or valid ISIR—

(A) Make one disbursement from each of the Federal Pell Grant, Federal Perkins Loan, or FSEOG Program funds for the applicant's first payment period of the award year;

(B) Employ or allow an employer to employ the applicant, once he or she is an eligible student, under the FWS Program for the first 60 consecutive days after the student's enrollment in that award year; or

(C) Originate the Direct Subsidized Loan and disburse the Subsidized Stafford Loan or Direct Subsidized Loan proceeds for the applicant.

(b) If an institution chooses to make a disbursement under—

(1) Paragraph (a)(2)(i)(B) of this section, it—

(i) Is liable for any overpayment discovered as a result of verification to the extent that the overpayment is not recovered through reducing subsequent disbursements in the award year or from the student; and

(ii) Must recover the overpayment in accordance with § 668.61(a);

(2) Paragraph (a)(2)(ii) of this section, it—

(i) Is liable for any overpayment discovered as a result of verification to the extent that the overpayment is not eliminated by adjusting other financial assistance; and

(ii) Must recover the overpayment in accordance with § 668.61(b); or

(3) Paragraph (a)(3) of this section, it—

(i) Is liable for any subsidized student financial assistance disbursed if it does not receive the valid SAR or valid ISIR reflecting corrections within the deadlines established under § 668.60; and

(ii) Must recover the funds in accordance with § 668.61(c).

(Authority: 20 U.S.C. 1094)

§ 668.59 Consequences of a change in an applicant's FAFSA information.

(a) For the subsidized student financial assistance programs, if an applicant's FAFSA information changes as a result of verification, the applicant or the institution must submit to the Secretary any changes to—

(1) A nondollar item; or

(2) A single dollar item of $25 or more.

(b) For the Federal Pell Grant Program, if an applicant's FAFSA information changes as a result of verification, an institution must—

(1) Recalculate the applicant's Federal Pell Grant on the basis of the EFC on the corrected valid SAR or valid ISIR; and

(2)(i) Disburse any additional funds under that award only if the institution receives a corrected valid SAR or valid ISIR for the applicant and only to the extent that additional funds are payable based on the recalculation;

(ii) Comply with the procedures specified in § 668.61 for an interim disbursement if, as a result of verification, the Federal Pell Grant award is reduced; or—

(iii) Comply with the procedures specified in 34 CFR 690.79 for an overpayment that is not an interim disbursement if, as a result of verification, the Federal Pell Grant award is reduced.

(c) For the subsidized student financial assistance programs, excluding the Federal Pell Grant Program, if an applicant's FAFSA information changes as a result of verification, the institution must—

(1) Adjust the applicant's financial aid package on the basis of the EFC on the corrected valid SAR or valid ISIR; and

(2)(i) Comply with the procedures specified in § 668.61 for an interim disbursement if, as a result of verification, the financial aid package must be reduced;

(ii) Comply with the procedures specified in 34 CFR 673.5(f) for a Federal Perkins loan or an FSEOG overpayment that is not the result of an interim disbursement if, as a result of verification, the financial aid package must be reduced; and

(iii) Comply with the procedures specified in 34 CFR 685.303(e) for Direct Subsidized Loan excess loan proceeds that are not the result of an interim disbursement if, as a result of verification, the financial aid package must be reduced.

(Approved by the Office of Management and Budget under control number 1845–0041)

(Authority: 20 U.S.C. 1094)

§ 668.60 Deadlines for submitting documentation and the consequences of failing to provide documentation.

(a) An institution must require an applicant selected for verification to submit to it, within the period of time it or the Secretary specifies, the documentation set forth in § 668.57 that is requested by the institution.

(b) For purposes of the subsidized student financial assistance programs, excluding the Federal Pell Grant Program—

(1) If an applicant fails to provide the requested documentation within a reasonable time period established by the institution—

(i) The institution may not—

(A) Disburse any additional Federal Perkins Loan or FSEOG Program funds to the applicant;

(B) Employ, continue to employ or allow an employer to employ the applicant under FWS; or

(C) Originate the applicant's Direct Subsidized Loan or disburse any additional Direct Subsidized Loan proceeds for the applicant; and

(ii) The applicant must repay to the institution any Federal Perkins Loan or FSEOG received for that award year;

(2) If the applicant provides the requested documentation after the time period established by the institution, the institution may, at its option, disburse aid to the applicant notwithstanding paragraph (b)(1) of this section; and

(3) If an institution has received proceeds for a Direct Subsidized Loan on behalf of an applicant, the institution must return all or a portion of those funds as provided under § 668.166(b) if the applicant does not complete verification within the time period specified.

(c) For purposes of the Federal Pell Grant Program—

(1) An applicant may submit a valid SAR to the institution or the institution may receive a valid ISIR after the applicable deadline specified in 34 CFR 690.61 but within an established additional time period set by the Secretary through publication of a notice in the **Federal Register**; and

(2) If the applicant does not provide to the institution the requested documentation and, if necessary, a valid SAR or the institution does not receive a valid ISIR, within the additional time period referenced in paragraph (c)(1) of this section, the applicant—

(i) Forfeits the Federal Pell Grant for the award year; and

(ii) Must return any Federal Pell Grant payments previously received for that award year.

(d) The Secretary may determine not to process FAFSA information of an applicant who has been requested to provide documentation until the applicant provides the documentation or the Secretary decides that there is no longer a need for the documentation.

(e) If an applicant selected for verification for an award year dies before the deadline for completing verification without completing that process, the institution may not—

(1) Make any further disbursements on behalf of that applicant;

(2) Originate that applicant's Direct Subsidized Loan, or disburse that applicant's Direct Subsidized Loan proceeds; or

(3) Consider any funds it disbursed to that applicant under § 668.58(a)(2) as an overpayment.

(Authority: 20 U.S.C. 1094)

§ 668.61 Recovery of funds from interim disbursements.

(a) If an institution discovers, as a result of verification, that an applicant received under § 668.58(a)(2)(i)(B) more financial aid than the applicant was eligible to receive, the institution must eliminate the Federal Pell Grant, Federal Perkins Loan, or FSEOG overpayment by—

(1) Adjusting subsequent disbursements in the award year in which the overpayment occurred; or

(2) Reimbursing the appropriate program account by—

(i) Requiring the applicant to return the overpayment to the institution if the institution cannot correct the overpayment under paragraph (a)(1) of this section; or

(ii) Making restitution from its own funds, by the earlier of the following dates, if the applicant does not return the overpayment:

(A) Sixty days after the applicant's last day of attendance.

(B) The last day of the award year in which the institution disbursed Federal Pell Grant, Federal Perkins Loan, or FSEOG Program funds to the applicant.

(b) If an institution discovers, as a result of verification, that an applicant received under § 668.58(a)(2)(ii) more financial aid than the applicant was eligible to receive, the institution must eliminate the FWS overpayment by—

(1) Adjusting the applicant's other financial aid; or

(2) Reimbursing the FWS program account by making restitution from its own funds, if the institution cannot correct the overpayment under paragraph (b)(1) of this section. The applicant must still be paid for all work performed under the institution's own payroll account.

(c) If an institution disbursed subsidized student financial assistance to an applicant under § 668.58(a)(3), and did not receive the valid SAR or valid ISIR reflecting corrections within the deadlines established under § 668.60, the institution must reimburse the appropriate program account by making restitution from its own funds. The applicant must still be paid for all work performed under the institution's own payroll account.

(Approved by the Office of Management and Budget under control number 1845–0041)

(Authority: 20 U.S.C. 1094)

■ 24. Subpart F of part 668 is revised to read as follows:

Subpart F—Misrepresentation

Sec.

Subpart F—Misrepresentation

§ 668.71 Scope and special definitions.

(a) If the Secretary determines that an eligible institution has engaged in substantial misrepresentation, the Secretary may—

(1) Revoke the eligible institution's program participation agreement;

(2) Impose limitations on the institution's participation in the title IV, HEA programs;

(3) Deny participation applications made on behalf of the institution; or

(4) Initiate a proceeding against the eligible institution under subpart G of this part.

(b) This subpart establishes the types of activities that constitute substantial misrepresentation by an eligible institution. An eligible institution is deemed to have engaged in substantial misrepresentation when the institution itself, one of its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement to provide educational programs, marketing, advertising, recruiting or admissions services, makes a substantial misrepresentation regarding the eligible institution, including about the nature of its educational program, its financial charges, or the employability of its graduates. Substantial misrepresentations are prohibited in all forms, including those made in any advertising, promotional materials, or in the marketing or sale of courses or programs of instruction offered by the institution.

(c) The following definitions apply to this subpart:

Misrepresentation: Any false, erroneous or misleading statement an eligible institution, one of its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement to provide educational programs, or to provide marketing, advertising, recruiting or admissions services makes directly or indirectly to a student, prospective student or any member of the public, or to an accrediting agency, to a State agency, or to the Secretary. A misleading statement includes any statement that has the likelihood or tendency to deceive or confuse. A statement is any communication made in writing, visually, orally, or through other means. Misrepresentation includes the dissemination of a student endorsement or testimonial that a student gives either under duress or because the institution required the student to make such an endorsement or testimonial to participate in a program.

Prospective student: Any individual who has contacted an eligible institution for the purpose of requesting information about enrolling at the institution or who has been contacted directly by the institution or indirectly through advertising about enrolling at the institution.

Substantial misrepresentation: Any misrepresentation on which the person to whom it was made could reasonably be expected to rely, or has reasonably relied, to that person's detriment.

(Authority: 20 U.S.C. 1094)

§ 668.72 Nature of educational program.

Misrepresentation concerning the nature of an eligible institution's educational program includes, but is not limited to, false, erroneous or misleading statements concerning—

(a) The particular type(s), specific source(s), nature and extent of its institutional, programmatic, or specialized accreditation;

(b)(1) Whether a student may transfer course credits earned at the institution to any other institution;

(2) Conditions under which the institution will accept transfer credits earned at another institution;

(c) Whether successful completion of a course of instruction qualifies a student—

(1) For acceptance to a labor union or similar organization; or

(2) To receive, to apply to take or to take the examination required to receive, a local, State, or Federal license, or a nongovernmental certification required as a precondition for employment, or to perform certain functions in the States in which the educational program is offered, or to meet additional conditions that the institution knows or reasonably should know are generally needed to secure employment in a recognized occupation for which the program is represented to prepare students;

(d) The requirements for successfully completing the course of study or program and the circumstances that would constitute grounds for terminating the student's enrollment;

(e) Whether its courses are recommended or have been the subject of unsolicited testimonials or endorsements by—

(1) Vocational counselors, high schools, colleges, educational organizations, employment agencies, members of a particular industry, students, former students, or others; or

(2) Governmental officials for governmental employment;

(f) Its size, location, facilities, or equipment;

(g) The availability, frequency, and appropriateness of its courses and programs to the employment objectives that it states its programs are designed to meet;

(h) The nature, age, and availability of its training devices or equipment and their appropriateness to the employment objectives that it states its programs and courses are designed to meet;

(i) The number, availability, and qualifications, including the training and experience, of its faculty and other personnel;

(j) The availability of part-time employment or other forms of financial assistance;

(k) The nature and availability of any tutorial or specialized instruction, guidance and counseling, or other supplementary assistance it will provide its students before, during or after the completion of a course;

(l) The nature or extent of any prerequisites established for enrollment in any course;

(m) The subject matter, content of the course of study, or any other fact related to the degree, diploma, certificate of completion, or any similar document that the student is to be, or is, awarded upon completion of the course of study;

(n) Whether the academic, professional, or occupational degree that the institution will confer upon completion of the course of study has been authorized by the appropriate State educational agency. This type of misrepresentation includes, in the case of a degree that has not been authorized by the appropriate State educational agency or that requires specialized accreditation, any failure by an eligible institution to disclose these facts in any advertising or promotional materials that reference such degree; or

(o) Any matters required to be disclosed to prospective students under §§ 668.42 and 668.43 of this part.

(Authority: 20 U.S.C. 1094)

§ 668.73 Nature of financial charges.

Misrepresentation concerning the nature of an eligible institution's financial charges includes, but is not limited to, false, erroneous, or misleading statements concerning—

(a) Offers of scholarships to pay all or part of a course charge;

(b) Whether a particular charge is the customary charge at the institution for a course;

(c) The cost of the program and the institution's refund policy if the student does not complete the program;

(d) The availability or nature of any financial assistance offered to students, including a student's responsibility to repay any loans, regardless of whether the student is successful in completing the program and obtaining employment; or

(e) The student's right to reject any particular type of financial aid or other assistance, or whether the student must apply for a particular type of financial aid, such as financing offered by the institution.

(Authority: 20 U.S.C. 1094)

§ 668.74 Employability of graduates.

Misrepresentation regarding the employability of an eligible institution's graduates includes, but is not limited to, false, erroneous, or misleading statements concerning—

(a) The institution's relationship with any organization, employment agency, or other agency providing authorized training leading directly to employment;

(b) The institution's plans to maintain a placement service for graduates or otherwise assist its graduates to obtain employment;

(c) The institution's knowledge about the current or likely future conditions, compensation, or employment opportunities in the industry or occupation for which the students are being prepared;

(d) Whether employment is being offered by the institution or that a talent hunt or contest is being conducted, including, but not limited to, through the use of phrases such as "Men/women wanted to train for * * *," "Help Wanted," "Employment," or "Business Opportunities";

(e) Government job market statistics in relation to the potential placement of its graduates; or

(f) Other requirements that are generally needed to be employed in the fields for which the training is provided, such as requirements related to commercial driving licenses or permits to carry firearms, and failing to disclose factors that would prevent an applicant from qualifying for such requirements, such as prior criminal records or preexisting medical conditions.

(Authority: 20 U.S.C. 1094)

§ 668.75 Relationship with the Department of Education.

An eligible institution, its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement may not describe the eligible institution's participation in the title IV, HEA programs in a manner that suggests approval or endorsement by the U.S. Department of Education of the quality of its educational programs.

(Authority: 20 U.S.C. 1094)

■ 25. Subpart J of part 668 is revised to read as follows:

Subpart J—Approval of Independently Administered Tests; Specification of Passing Score; Approval of State Process

Sec.

Subpart J—Approval of Independently Administered Tests; Specification of Passing Score; Approval of State Process

§ 668.141 Scope.

(a) This subpart sets forth the provisions under which a student who has neither a high school diploma nor its recognized equivalent may become eligible to receive title IV, HEA program funds by—

(1) Achieving a passing score, specified by the Secretary, on an independently administered test approved by the Secretary under this subpart; or

(2) Being enrolled in an eligible institution that participates in a State process approved by the Secretary under this subpart.

(b) Under this subpart, the Secretary sets forth—

(1) The procedures and criteria the Secretary uses to approve tests;

(2) The basis on which the Secretary specifies a passing score on each approved test;

(3) The procedures and conditions under which the Secretary determines that an approved test is independently administered;

(4) The information that a test publisher or a State must submit, as part of its test submission, to explain the methodology it will use for the test anomaly studies as described in § 668.144(c)(17) and (d)(8), as appropriate;

(5) The requirements that a test publisher or a State, as appropriate—

(i) Have a process to identify and follow up on test score irregularities;

(ii) Take corrective action—up to and including decertification of test administrators—if the test publisher or the State determines that test score irregularities have occurred; and

(iii) Report to the Secretary the names of any test administrators it decertifies and any other action taken as a result of test score analyses; and

(6) The procedures and conditions under which the Secretary determines that a State process demonstrates that students in the process have the ability to benefit from the education and training being offered to them.

(Authority: 20 U.S.C. 1091(d))

§ 668.142 Special definitions.

The following definitions apply to this subpart:

Assessment center: A facility that—

(1) Is located at an eligible institution that provides two-year or four-year degrees or is a postsecondary vocational institution;

(2) Is responsible for gathering and evaluating information about individual students for multiple purposes, including appropriate course placement;

(3) Is independent of the admissions and financial aid processes at the institution at which it is located;

(4) Is staffed by professionally trained personnel;

(5) Uses test administrators to administer tests approved by the Secretary under this subpart; and

(6) Does not have as its primary purpose the administration of ability to benefit tests.

ATB test irregularity: An irregularity that results from an ATB test being administered in a manner that does not conform to the established rules for test administration consistent with the provisions of subpart J of part 668 and the test administrator's manual.

Computer-based test: A test taken by a student on a computer and scored by a computer.

General learned abilities: Cognitive operations, such as deductive reasoning, reading comprehension, or translation from graphic to numerical representation, that may be learned in both school and non-school environments.

Independent test administrator: A test administrator who administers tests at a location other than an assessment center and who—

(1) Has no current or prior financial or ownership interest in the institution, its affiliates, or its parent corporation, other than the fees earned for administering approved ATB tests through an agreement with the test publisher or State and has no controlling interest in any other institution;

(2) Is not a current or former employee of or consultant to the institution, its affiliates, or its parent corporation, a person in control of another institution, or a member of the family of any of these individuals;

(3) Is not a current or former member of the board of directors, a current or former employee of or a consultant to a member of the board of directors, chief executive officer, chief financial officer of the institution, its affiliates, or its parent corporation or of any other institution, or a member of the family of any of these individuals; and

(4) Is not a current or former student of the institution.

Individual with a disability: A person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

Non-native speaker of English: A person whose first language is not English and who is not fluent in English.

Secondary school level: As applied to "content," "curricula," or "basic verbal and quantitative skills," the basic knowledge or skills generally learned in the 9th through 12th grades in United States secondary schools.

Test: A standardized test, assessment or instrument that has formal protocols on how it is to be administered in order to be valid. These protocols include, for example, the use of parallel, equated forms; testing conditions; time allowed

for the test; and standardized scoring. Tests are not limited to traditional paper and pencil (or computer-administered) instruments for which forms are constructed prior to administration to examinees. Tests may also include adaptive instruments that use computerized algorithms for selecting and administering items in real time; however, for such instruments, the size of the item pool and the method of item selection must ensure negligible overlap in items across retests.

Test administrator: An individual who is certified by the test publisher (or the State, in the case of an approved State test or assessment) to administer tests approved under this subpart in accordance with the instructions provided by the test publisher or the State, as applicable, which includes protecting the test and the test results from improper disclosure or release, and who is not compensated on the basis of test outcomes.

Test item: A question on a test.

Test publisher: An individual, organization, or agency that owns a registered copyright of a test, or has been authorized by the copyright holder to represent the copyright holder's interests regarding the test.

(Authority: 20 U.S.C. 1091(d))

§ 668.143 [Reserved]

§ 668.144 Application for test approval.

(a) The Secretary only reviews tests under this subpart that are submitted by the publisher of that test or by a State.

(b) A test publisher or a State that wishes to have its test approved by the Secretary under this subpart must submit an application to the Secretary at such time and in such manner as the Secretary may prescribe. The application must contain all the information necessary for the Secretary to approve the test under this subpart, including but not limited to, the information contained in paragraph (c) or (d) of this section, as applicable.

(c) A test publisher must include with its application—

(1) A summary of the precise editions, forms, levels, and (if applicable) sub-tests for which approval is being sought;

(2) The name, address, telephone number, and e-mail address of a contact person to whom the Secretary may address inquiries;

(3) Each edition, form, level, and sub-test of the test for which the test publisher requests approval;

(4) The distribution of test scores for each edition, form, level, or sub-test for which approval is sought, that allows the Secretary to prescribe the passing score for each test in accordance with § 668.147;

(5) Documentation of test development, including a history of the test's use;

(6) Norming data and other evidence used in determining the distribution of test scores;

(7) Material that defines the content domains addressed by the test;

(8) Documentation of periodic reviews of the content and specifications of the test to ensure that the test reflects secondary school level verbal and quantitative skills;

(9) If a test being submitted is a revision of the most recent edition approved by the Secretary, an analysis of the revisions, including the reasons for the revisions, the implications of the revisions for the comparability of scores on the current test to scores on the previous test, and data from validity studies of the test undertaken subsequent to the revisions;

(10) A description of the manner in which test-taking time was determined in relation to the content representativeness requirements in § 668.146(b)(3) and an analysis of the effects of time on performance. This description may also include the manner in which test-taking time was determined in relation to the other requirements in § 668.146(b);

(11) A technical manual that includes—

(i) An explanation of the methodology and procedures for measuring the reliability of the test;

(ii) Evidence that different forms of the test, including, if applicable, short forms, are comparable in reliability;

(iii) Other evidence demonstrating that the test permits consistent assessment of individual skill and ability;

(iv) Evidence that the test was normed using—

(A) Groups that were of sufficient size to produce defensible standard errors of the mean and were not disproportionately composed of any race or gender; and

(B) A contemporary sample that is representative of the population of persons who have earned a high school diploma in the United States;

(v) Documentation of the level of difficulty of the test;

(vi) Unambiguous scales and scale values so that standard errors of measurement can be used to determine statistically significant differences in performance; and

(vii) Additional guidance on the interpretation of scores resulting from any modifications of the test for individuals with temporary impairments, individuals with disabilities and guidance on the types of accommodations that are allowable;

(12) The manual provided to test administrators containing procedures and instructions for test security and administration, and the forwarding of tests to the test publisher;

(13) An analysis of the item-content of each edition, form, level, and (if applicable) sub-test to demonstrate compliance with the required secondary school level criterion specified in § 668.146(b);

(14) A description of retesting procedures and the analysis upon which the criteria for retesting are based;

(15) Other evidence establishing the test's compliance with the criteria for approval of tests as provided in § 668.146;

(16) A description of its test administrator certification process that provides—

(i) How the test publisher will determine that the test administrator has the necessary training, knowledge, skill, and integrity to test students in accordance with this subpart and the test publisher's requirements; and

(ii) How the test publisher will determine that the test administrator has the ability and facilities to keep its test secure against disclosure or release;

(17) A description of the test anomaly analysis the test publisher will conduct and submit to the Secretary that includes—

(i) An explanation of how the test publisher will identify potential test irregularities and make a determination that test irregularities have occurred;

(ii) An explanation of the process and procedures for corrective action (up to and including decertification of a certified test administrator) when the test publisher determines that test irregularities have occurred; and

(iii) Information on when and how the test publisher will notify a test administrator, the Secretary, and the institutions for which the test administrator had previously provided testing services for that test publisher, that the test administrator has been decertified; and

(18)(i) An explanation of any accessible technologies that are available to accommodate individuals with disabilities, and

(ii) A description of the process for a test administrator to identify and report to the test publisher when accommodations for individuals with disabilities were provided, for scoring and norming purposes.

(d) A State must include with its application—

(1) The information necessary for the Secretary to determine that the test the State uses measures a student's skills and abilities for the purpose of determining whether the student has the skills and abilities the State expects of a high school graduate in that State;

(2) The passing scores on that test;

(3) Any guidance on the interpretation of scores resulting from any modifications of the test for individuals with disabilities;

(4) A statement regarding how the test will be kept secure;

(5) A description of retesting procedures and the analysis upon which the criteria for retesting are based;

(6) Other evidence establishing the test's compliance with the criteria for approval of tests as provided in § 668.146;

(7) A description of its test administrator certification process that provides—

(i) How the State will determine that the test administrator has the necessary training, knowledge, skill, and integrity to test students in accordance with the State's requirements; and

(ii) How the State will determine that the test administrator has the ability and facilities to keep its test secure against disclosure or release;

(8) A description of the test anomaly analysis that the State will conduct and submit to the Secretary that includes—

(i) An explanation of how the State will identify potential test irregularities and make a determination that test irregularities have occurred;

(ii) An explanation of the process and procedures for corrective action (up to and including decertification of a test administrator) when the State determines that test irregularities have occurred; and

(iii) Information on when and how the State will notify a test administrator, the Secretary, and the institutions for which the test administrator had previously provided testing services for that State, that the test administrator has been decertified;

(9)(i) An explanation of any accessible technologies that are available to accommodate individuals with disabilities; and

(ii) A description of the process for a test administrator to identify and report to the test publisher when accommodations for individuals with disabilities were provided, for scoring and norming purposes; and

(10) The name, address, telephone number, and e-mail address of a contact person to whom the Secretary may address inquiries.

(11) A technical manual that includes—

(i) An explanation of the methodology and procedures for measuring the reliability of the test;

(ii) Evidence that different forms of the test, including, if applicable, short forms, are comparable in reliability;

(iii) Other evidence demonstrating that the test permits consistent assessment of individual skill and ability;

(iv) Evidence that the test was normed using—

(A) Groups that were of sufficient size to produce defensible standard errors of the mean and were not disproportionately composed of any race or gender; and

(B) A contemporary sample that is representative of the population of persons who have earned a high school diploma in the United States;

(v) Documentation of the level of difficulty of the test;

(vi) Unambiguous scales and scale values so that standard errors of measurement can be used to determine statistically significant differences in performance; and

(vii) Additional guidance on the interpretation of scores resulting from any modifications of the test for individuals with temporary impairments, individuals with disabilities and guidance on the types of accommodations that are allowable;

(12) the manual provided to test administrators containing procedures and instructions for test security and administration, and the forwarding of tests to the State.

(Approved by the Office of Management and Budget under control number 1845–0049)

(Authority: 20 U.S.C. 1091(d))

§ 668.145 Test approval procedures.

(a)(1) When the Secretary receives a complete application from a test publisher or a State, the Secretary selects one or more experts in the field of educational testing and assessment, who possess appropriate advanced degrees and experience in test development or psychometric research, to determine whether the test meets the requirements for test approval contained in §§ 668.146, 668.147, 668.148, or 668.149, as appropriate, and to advise the Secretary of their determinations.

(2) If the test involves a language other than English, the Secretary selects at least one individual who is fluent in the language in which the test is written to collaborate with the testing expert or experts described in paragraph (a)(1) of this section and to advise the Secretary on whether the test meets the additional criteria, provisions, and conditions for test approval contained in §§ 668.148 and 668.149.

(3) For test batteries that contain multiple sub-tests measuring content domains other than verbal and quantitative domains, the Secretary reviews only those sub-tests covering the verbal and quantitative domains.

(b)(1) If the Secretary determines that a test satisfies the criteria and requirements for test approval, the Secretary notifies the test publisher or the State, as applicable, of the Secretary's decision, and publishes the name of the test and the passing scores in the **Federal Register**.

(2) If the Secretary determines that a test does not satisfy the criteria and requirements for test approval, the Secretary notifies the test publisher or the State, as applicable, of the Secretary's decision, and the reasons why the test did not meet those criteria and requirements.

(3) If the Secretary determines that a test does not satisfy the criteria and requirements for test approval, the test publisher or the State that submitted the test for approval may request that the Secretary reevaluate the Secretary's decision. Such a request must be accompanied by—

(i) Documentation and information that address the reasons for the non-approval of the test; and

(ii) An analysis of why the information and documentation submitted meet the criteria and requirements for test approval notwithstanding the Secretary's earlier decision to the contrary.

(c)(1) The Secretary approves a test for a period not to exceed five years from the date the notice of approval of the test is published in the **Federal Register**.

(2) The Secretary extends the approval period of a test to include the period of review if the test publisher or the State, as applicable, re-submits the test for review and approval under § 668.144 at least six months before the date on which the test approval is scheduled to expire.

(d)(1) The Secretary's approval of a test may be revoked if the Secretary determines that the test publisher or the State violated any terms of the agreement described in § 668.150, that the information the test publisher or the State submitted as a basis for approval of the test was inaccurate, or that the test publisher or the State substantially changed the test and did not resubmit the test, as revised, for approval.

(2) If the Secretary revokes approval of a previously approved test, the Secretary publishes a notice of that revocation in the **Federal Register**. The revocation becomes effective—

(i) One hundred and twenty days from the date the notice of revocation is published in the **Federal Register**; or

(ii) An earlier date specified by the Secretary in a notice published in the **Federal Register**.

(Approved by the Office of Management and Budget under control number 1845–0049)

(Authority: 20 U.S.C. 1091(d))

§ 668.146 Criteria for approving tests.

(a) Except as provided in § 668.148, the Secretary approves a test under this subpart if—

(1) The test meets the criteria set forth in paragraph (b) of this section;

(2) The test publisher or the State satisfies the requirements set forth in paragraph (c) of this section; and

(3) The Secretary makes a determination that the information the test publisher or State submitted in accordance with § 668.144(c)(17) or (d)(8), as applicable, provides adequate assurance that the test publisher or State will conduct rigorous test anomaly analyses and take appropriate action if test administrators do not comply with testing procedures.

(b) To be approved under this subpart, a test must—

(1) Assess secondary school level basic verbal and quantitative skills and general learned abilities;

(2) Sample the major content domains of secondary school level verbal and quantitative skills with sufficient numbers of questions to—

(i) Adequately represent each domain; and

(ii) Permit meaningful analyses of item-level performance by students who are representative of the contemporary population beyond the age of compulsory school attendance and have earned a high school diploma;

(3) Require appropriate test-taking time to permit adequate sampling of the major content domains described in paragraph (b)(2) of this section;

(4) Have all forms (including short forms) comparable in reliability;

(5) Have, in the case of a test that is revised, new scales, scale values, and scores that are demonstrably comparable to the old scales, scale values, and scores;

(6) Meet all standards for test construction provided in the 1999 edition of the *Standards for Educational and Psychological Testing,* prepared by a joint committee of the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education incorporated by reference in this section. Incorporation by reference of this document has been approved by the Director of the Office of the Federal Register pursuant to the Director's authority under 5 U.S.C. 552(a) and 1 CFR part 51. The incorporated document is on file at the Department of Education, Federal Student Aid, room 113E2, 830 First Street, NE., Washington, DC 20002, phone (202) 377–4026, and at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 1–866–272–6272, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* The document also may be obtained from the American Educational Research Association at: *http://www.aera.net;* and

(7) Have the test publisher's or the State's guidelines for retesting, including time between test-taking, be based on empirical analyses that are part of the studies of test reliability.

(c) In order for a test to be approved under this subpart, a test publisher or a State must—

(1) Include in the test booklet or package—

(i) Clear, specific, and complete instructions for test administration, including information for test takers on the purpose, timing, and scoring of the test; and

(ii) Sample questions representative of the content and average difficulty of the test;

(2) Have two or more secure, equated, alternate forms of the test;

(3) Except as provided in §§ 668.148 and 668.149, provide tables of distributions of test scores which clearly indicate the mean score and standard deviation for high school graduates who have taken the test within three years prior to the date that the test is submitted to the Secretary for approval under § 668.144;

(4) Norm the test with—

(i) Groups that are of sufficient size to produce defensible standard errors of the mean and are not disproportionately composed of any race or gender; and

(ii) A contemporary sample that is representative of the population of persons who have earned a high school diploma in the United States; and

(5) If test batteries include sub-tests assessing different verbal and/or quantitative skills, a distribution of test scores as described in paragraph (c)(3) of this section that allows the Secretary to prescribe either—

(i) A passing score for each sub-test; or

(ii) One composite passing score for verbal skills and one composite passing score for quantitative skills.

(Approved by the Office of Management and Budget under control number 1845–0049)

(Authority: 20 U.S.C. 1091(d))

§ 668.147 Passing scores.

Except as provided in §§ 668.144(d), 668.148, and 668.149, to demonstrate that a test taker has the ability to benefit from the education and training offered by the institution, the Secretary specifies that the passing score on each approved test is one standard deviation below the mean score of a sample of individuals who have taken the test within the three years before the test is submitted to the Secretary for approval. The sample must be representative of the population of high school graduates in the United States.

(Authority: 20 U.S.C. 1091(d))

§ 668.148 Additional criteria for the approval of certain tests.

(a) In addition to satisfying the criteria in § 668.146, to be approved by the Secretary, a test must meet the following criteria, if applicable:

(1) In the case of a test developed for a non-native speaker of English who is enrolled in a program that is taught in his or her native language, the test must be—

(i) Linguistically accurate and culturally sensitive to the population for which the test is designed, regardless of the language in which the test is written;

(ii) Supported by documentation detailing the development of normative data;

(iii) If translated from an English version, supported by documentation of procedures to determine its reliability and validity with reference to the population for which the translated test was designed;

(iv) Developed in accordance with guidelines provided in the 1999 edition of the "Testing Individuals of Diverse Linguistic Backgrounds" section of the *Standards for Educational and Psychological Testing* prepared by a joint committee of the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education incorporated by reference in this section. Incorporation by reference of this document has been approved by the Director of the Office of the Federal Register pursuant to the Director's authority under 5 U.S.C. 552(a) and 1 CFR part 51. The incorporated document is on file at the Department of Education, Federal Student Aid, room 113E2, 830 First Street, NE., Washington, DC 20002, phone (202) 377–4026, and at the National Archives

and Records Administration (NARA). For information on the availability of this material at NARA, call 1–866–272–6272, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* The document also may be obtained from the American Educational Research Association at: *http://www.aera.net;* and

(v)(A) If the test is in Spanish, accompanied by a distribution of test scores that clearly indicates the mean score and standard deviation for Spanish-speaking students with high school diplomas who have taken the test within five years before the date on which the test is submitted to the Secretary for approval.

(B) If the test is in a language other than Spanish, accompanied by a recommendation for a provisional passing score based upon performance of a sample of test takers representative of non-English speaking individuals who speak a language other than Spanish and who have a high school diploma. The sample upon which the recommended provisional passing score is based must be large enough to produce stable norms.

(2) In the case of a test that is modified for use for individuals with disabilities, the test publisher or State must—

(i) Follow guidelines provided in the "Testing Individuals with Disabilities" section of the *Standards for Educational and Psychological Testing;* and

(ii) Provide documentation of the appropriateness and feasibility of the modifications relevant to test performance.

(3) In the case of a computer-based test, the test publisher or State, as applicable, must—

(i) Provide documentation to the Secretary that the test complies with the basic principles of test construction and standards of reliability and validity as promulgated in the *Standards for Educational and Psychological Testing;*

(ii) Provide test administrators with instructions for familiarizing test takers with computer hardware prior to test-taking; and

(iii) Provide two or more parallel, equated forms of the test, or, if parallel forms are generated from an item pool, provide documentation of the methods of item selection for alternate forms.

(b) If a test is designed solely to measure the English language competence of non-native speakers of English—

(1) The test must meet the criteria set forth in § 668.146(b)(6), (c)(1), (c)(2), and (c)(4); and

(2) The test publisher must recommend a passing score based on the mean score of test takers beyond the age of compulsory school attendance who completed U.S. high school equivalency programs, formal training programs, or bilingual vocational programs.

(Approved by the Office of Management and Budget under control number 1845–0049)

(Authority: 20 U.S.C. 1091(d))

§ 668.149 Special provisions for the approval of assessment procedures for individuals with disabilities.

If no test is reasonably available for individuals with disabilities so that no test can be approved under §§ 668.146 or 668.148 for these individuals, the following procedures apply:

(a) The Secretary considers a modified test or testing procedure, or instrument that has been scientifically developed specifically for the purpose of evaluating the ability to benefit from postsecondary training or education of individuals with disabilities to be an approved test for purposes of this subpart provided that the testing procedure or instrument measures both basic verbal and quantitative skills at the secondary school level.

(b) The Secretary considers the passing scores for these testing procedures or instruments to be those recommended by the test publisher or State, as applicable.

(c) The test publisher or State, as applicable, must—

(1) Maintain appropriate documentation, including a description of the procedures or instruments, their content domains, technical properties, and scoring procedures; and

(2) Require the test administrator to—

(i) Use the procedures or instruments in accordance with instructions provided by the test publisher or State, as applicable; and

(ii) Use the passing scores recommended by the test publisher or State, as applicable.

(Approved by the Office of Management and Budget under control number 1845–0049)

(Authority: 20 U.S.C. 1091(d))

§ 668.150 Agreement between the Secretary and a test publisher or a State.

(a) If the Secretary approves a test under this subpart, the test publisher or the State that submitted the test must enter into an agreement with the Secretary that contains the provisions set forth in paragraph (b) of this section before an institution may use the test to determine a student's eligibility for title IV, HEA program funds.

(b) The agreement between a test publisher or a State, as applicable, and the Secretary provides that the test publisher or the State, as applicable, must—

(1) Allow only test administrators that it certifies to give its test;

(2) Require each test administrator it certifies to—

(i) Provide the test publisher or the State, as applicable, with a certification statement that indicates he or she is not currently decertified; and

(ii) Notify the test publisher or the State, as applicable, immediately if any other test publisher or State decertifies the test administrator;

(3) Only certify test administrators who—

(i) Have the necessary training, knowledge, and skill to test students in accordance with the test publisher's or the State's testing requirements;

(ii) Have the ability and facilities to keep its test secure against disclosure or release; and

(iii) Have not been decertified within the last three years by any test publisher or State;

(4) Decertify a test administrator for a period of three years if the test publisher or the State finds that the test administrator—

(i) Has failed to give its test in accordance with the test publisher's or the State's instructions;

(ii) Has not kept the test secure;

(iii) Has compromised the integrity of the testing process; or

(iv) Has given the test in violation of the provisions contained in § 668.151;

(5) Reevaluate the qualifications of a test administrator who has been decertified by another test publisher or State and determine whether to continue the test administrator's certification or to decertify the test administrator;

(6) Immediately notify the test administrator, the Secretary, and the institutions where the test administrator previously administered approved tests when the test publisher or the State decertifies a test administrator;

(7)(i) Review the test results of the tests administered by a decertified test administrator and determine which tests may have been improperly administered during the five (5) year period preceding the date of decertification;

(ii) Immediately notify the affected institutions and students or prospective students; and

(iii) Provide a report to the Secretary on the results of the review and the notifications provided to institutions and students or prospective students;

(8) Report to the Secretary if the test publisher or the State certifies a previously decertified test administrator after the three year period specified in paragraph (b)(4) of this section;

(9) Score a test answer sheet that it receives from a test administrator;

(10) If a computer-based test is used, provide the test administrator with software that will—

(i) Immediately generate a score report for each test taker;

(ii) Allow the test administrator to send to the test publisher or the State, as applicable, a record of the test taker's performance on each test item and the test taker's test scores using a data transfer method that is encrypted and secure; and

(iii) Prohibit any changes in test taker responses or test scores;

(11) Promptly send to the student and the institution the student indicated he or she is attending or scheduled to attend a notice stating the student's score for the test and whether or not the student passed the test;

(12) Keep each test answer sheet or electronic record forwarded for scoring and all other documents forwarded by the test administrator with regard to the test for a period of three years from the date the analysis of the tests results, described in paragraph (b)(13) of this section, was sent to the Secretary;

(13) Analyze the test scores of students who take the test to determine whether the test scores and data produce any irregular pattern that raises an inference that the tests were not being properly administered, and provide the Secretary with a copy of this analysis within 18 months after the test was approved and every 18 months thereafter during the period of test approval;

(14) Upon request, give the Secretary, a State agency, an accrediting agency, and law enforcement agencies access to test records or other documents related to an audit, investigation, or program review of an institution, the test publisher, or a test administrator;

(15) Immediately report to the Secretary if the test publisher or the State finds any credible information indicating that a test has been compromised;

(16) Immediately report to the Office of Inspector General of the Department of Education for investigation if the test publisher or the State finds any credible information indicating that a test administrator or institution may have engaged in civil or criminal fraud, or other misconduct; and

(17) Require a test administrator who provides a test to an individual with a disability who requires an accommodation in the test's administration to report to the test publisher or the State within the time period specified in § 668.151(b)(2) or § 668.152(b)(2), as applicable, the nature of the disability and the accommodations that were provided.

(c)(1) The Secretary may terminate an agreement with a test publisher or a State, as applicable, if the test publisher or the State fails to carry out the terms of the agreement described in paragraph (b) of this section.

(2) Before terminating the agreement, the Secretary gives the test publisher or the State, as applicable, the opportunity to show that it has not failed to carry out the terms of its agreement.

(3) If the Secretary terminates an agreement with a test publisher or a State under this section, the Secretary publishes a notice in the **Federal Register** specifying when institutions may no longer use the test publisher's or the State's test(s) for purposes of determining a student's eligibility for title IV, HEA program funds.

(Approved by the Office of Management and Budget under control number 1845–0049)

(Authority: 20 U.S.C. 1091(d))

§ 668.151 Administration of tests.

(a)(1) To establish a student's eligibility for title IV, HEA program funds under this subpart, an institution must select a test administrator to give an approved test.

(2) An institution may use the results of an approved test it received from an approved test publisher or assessment center to determine a student's eligibility to receive title IV, HEA program funds if the test was independently administered and properly administered in accordance with this subpart.

(b) The Secretary considers that a test is independently administered if the test is—

(1) Given at an assessment center by a certified test administrator who is an employee of the center; or

(2) Given by an independent test administrator who maintains the test at a secure location and submits the test for scoring by the test publisher or the State or, for a computer-based test, a record of the test scores, within two business days of administering the test.

(c) The Secretary considers that a test is not independently administered if an institution—

(1) Compromises test security or testing procedures;

(2) Pays a test administrator a bonus, commission, or any other incentive based upon the test scores or pass rates of its students who take the test; or

(3) Otherwise interferes with the test administrator's independence or test administration.

(d) The Secretary considers that a test is properly administered if the test administrator—

(1) Is certified by the test publisher or the State, as applicable, to give the test publisher's or the State's test;

(2) Administers the test in accordance with instructions provided by the test publisher or the State, as applicable, and in a manner that ensures the integrity and security of the test;

(3) Makes the test available only to a test-taker, and then only during a regularly scheduled test;

(4) Secures the test against disclosure or release; and

(5) Submits the completed test or, for a computer-based test, a record of test scores, to the test publisher or the State, as applicable, within the time period specified in § 668.152(b) or paragraph (b)(2) of this section, as appropriate, and in accordance with the test publisher's or the State's instructions.

(e) An independent test administrator may not score a test.

(f) An individual who fails to pass a test approved under this subpart may not retake the same form of the test for the period prescribed by the test publisher or the State responsible for the test.

(g) An institution must maintain a record for each individual who took a test under this subpart. The record must include—

(1) The test taken by the individual;

(2) The date of the test;

(3) The individual's scores as reported by the test publisher, an assessment center, or the State;

(4) The name and address of the test administrator who administered the test and any identifier assigned to the test administrator by the test publisher or the State; and

(5) If the individual who took the test is an individual with a disability and was unable to be evaluated by the use of an approved ATB test or the individual requested or required testing accommodations, documentation of the individual's disability and of the testing arrangements provided in accordance with § 668.153(b).

(Approved by the Office of Management and Budget under control number 1845–0049)

(Authority: 20 U.S.C. 1091(d))

§ 668.152 Administration of tests by assessment centers.

(a) If a test is given by an assessment center, the assessment center must properly administer the test as described in § 668.151(d), and § 668.153, if applicable.

(b)(1) Unless an agreement between a test publisher or a State, as applicable, and an assessment center indicates otherwise, an assessment center scores

the tests it gives and promptly notifies the institution and the student of the student's score on the test and whether the student passed the test.

(2) If the assessment center scores the test, it must provide weekly to the test publisher or the State, as applicable—

(i) All copies of the completed test, including the name and address of the test administrator who administered the test and any identifier assigned to the test administrator by the test publisher or the State, as applicable; or

(ii) A report listing all test-takers' scores and institutions to which the scores were sent and the name and address of the test administrator who administered the test and any identifier assigned to the test administrator by the test publisher or the State, as applicable.

(Approved by the Office of Management and Budget under control number 1845–0049)

(Authority: 20 U.S.C. 1091(d))

§ 668.153 Administration of tests for individuals whose native language is not English or for individuals with disabilities.

(a) *Individuals whose native language is not English.* For an individual whose native language is not English and who is not fluent in English, the institution must use the following tests, as applicable:

(1) If the individual is enrolled or plans to enroll in a program conducted entirely in his or her native language, the individual must take a test approved under §§ 668.146 and 668.148(a)(1).

(2) If the individual is enrolled or plans to enroll in a program that is taught in English with an ESL component, the individual must take an English language proficiency assessment approved under § 668.148(b) and, before beginning the portion of the program taught in English, a test approved under § 668.146.

(3) If the individual is enrolled or plans to enroll in a program that is taught in English without an ESL component, or the individual does not enroll in any ESL component offered, the individual must take a test in English approved under § 668.146.

(4) If the individual enrolls in an ESL program, the individual must take an ESL test approved under § 668.148(b).

(5) If the individual enrolls or plans to enroll in a program that is taught in the student's native language that either has an ESL component or a portion of the program will be taught in English, the individual must take an English proficiency test approved under § 668.148(b) prior to beginning the portion of the program taught in English.

(b) *Individuals with disabilities.* (1) For an individual with a disability who has neither a high school diploma nor its equivalent and who is applying for title IV, HEA program funds and seeks to show his or her ability to benefit through the testing procedures in this subpart, an institution must use a test described in § 668.148(a)(2) or § 668.149(a).

(2) The test must reflect the individual's skills and general learned abilities.

(3) The test administrator must ensure that there is documentation to support the determination that the individual is an individual with a disability and requires accommodations—such as extra time or a quiet room—for taking an approved test, or is unable to be evaluated by the use of an approved ATB test.

(4) Documentation of an individual's disability may be satisfied by—

(i) A written determination, including a diagnosis and information about testing accommodations, if such accommodation information is available, by a licensed psychologist or physician; or

(ii) A record of the disability from a local or State educational agency, or other government agency, such as the Social Security Administration or a vocational rehabilitation agency, that identifies the individual's disability. This record may, but is not required to, include a diagnosis and recommended testing accommodations.

(Approved by the Office of Management and Budget under control number 1845–0049)

(Authority: 20 U.S.C. 1091(d))

§ 668.154 Institutional accountability.

An institution is liable for the title IV, HEA program funds disbursed to a student whose eligibility is determined under this subpart only if—

(a) The institution used a test that was not administered independently, in accordance with § 668.151(b);

(b) The institution or an employee of the institution compromised the testing process in any way; or

(c) The institution is unable to document that the student received a passing score on an approved test.

(Authority: 20 U.S.C. 1091(d))

§ 668.155 [Reserved]

§ 668.156 Approved State process.

(a)(1) A State that wishes the Secretary to consider its State process as an alternative to achieving a passing score on an approved, independently administered test for the purpose of determining a student's eligibility for title IV, HEA program funds must apply to the Secretary for approval of that process.

(2) To be an approved State process, the State process does not have to include all the institutions located in that State, but must indicate which institutions are included.

(b) The Secretary approves a State's process if—

(1) The State administering the process can demonstrate that the students it admits under that process without a high school diploma or its equivalent, who enroll in participating institutions have a success rate as determined under paragraph (h) of this section that is within 95 percent of the success rate of students with high school diplomas; and

(2) The State's process satisfies the requirements contained in paragraphs (c) and (d) of this section.

(c) A State process must require institutions participating in the process to provide each student they admit without a high school diploma or its recognized equivalent with the following services:

(1) Orientation regarding the institution's academic standards and requirements, and student rights.

(2) Assessment of each student's existing capabilities through means other than a single standardized test.

(3) Tutoring in basic verbal and quantitative skills, if appropriate.

(4) Assistance in developing educational goals.

(5) Counseling, including counseling regarding the appropriate class level for that student given the student's individual's capabilities.

(6) Follow-up by teachers and counselors regarding the student's classroom performance and satisfactory progress toward program completion.

(d) A State process must—

(1) Monitor on an annual basis each participating institution's compliance with the requirements and standards contained in the State's process;

(2) Require corrective action if an institution is found to be in noncompliance with the State process requirements; and

(3) Terminate an institution from the State process if the institution refuses or fails to comply with the State process requirements.

(e)(1) The Secretary responds to a State's request for approval of its State's process within six months after the Secretary's receipt of that request. If the Secretary does not respond by the end of six months, the State's process is deemed to be approved.

(2) An approved State process becomes effective for purposes of

determining student eligibility for title IV, HEA program funds under this subpart—

(i) On the date the Secretary approves the process; or

(ii) Six months after the date on which the State submits the process to the Secretary for approval, if the Secretary neither approves nor disapproves the process during that six month period.

(f) The Secretary approves a State process for a period not to exceed five years.

(g)(1) The Secretary withdraws approval of a State process if the Secretary determines that the State process violated any terms of this section or that the information that the State submitted as a basis for approval of the State process was inaccurate.

(2) The Secretary provides a State with the opportunity to contest a finding that the State process violated any terms of this section or that the information that the State submitted as a basis for approval of the State process was inaccurate.

(h) The State must calculate the success rates as referenced in paragraph (b) of this section by—

(1) Determining the number of students with high school diplomas who, during the applicable award year described in paragraph (i) of this section, enrolled in participating institutions and—

(i) Successfully completed education or training programs;

(ii) Remained enrolled in education or training programs at the end of that award year; or

(iii) Successfully transferred to and remained enrolled in another institution at the end of that award year;

(2) Determining the number of students with high school diplomas who enrolled in education or training programs in participating institutions during that award year;

(3) Determining the number of students calculated in paragraph (h)(2) of this section who remained enrolled after subtracting the number of students who subsequently withdrew or were expelled from participating institutions and received a 100 percent refund of their tuition under the institutions' refund policies;

(4) Dividing the number of students determined in paragraph (h)(1) of this section by the number of students determined in paragraph (h)(3) of this section;

(5) Making the calculations described in paragraphs (h)(1) through (h)(4) of this section for students without a high school diploma or its recognized equivalent who enrolled in participating institutions.

(i) For purposes of paragraph (h) of this section, the applicable award year is the latest complete award year for which information is available that immediately precedes the date on which the State requests the Secretary to approve its State process, except that the award year selected must be one of the latest two completed award years preceding that application date.

(Approved by the Office of Management and Budget under control number 1845–0049)

(Authority: 20 U.S.C. 1091(d))

■ 26. Section 668.164 is amended by:

■ A. In paragraph (g)(2)(i), removing the words "Except in the case of a parent PLUS loan, the", and adding, in their place, the word "The".

■ B. In paragraph (g)(4)(iv), removing the words "a Federal Pell Grant, an ACG, or a National SMART Grant", and adding, in their place, the words "any title IV, HEA program assistance".

■ C. Adding paragraph (i).

The addition reads as follows:

§ 668.164 Disbursing funds.

* * * * *

(i) *Provisions for books and supplies.* (1) An institution must provide a way 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 if, 10 days before the beginning of the payment period—

(i) The institution could disburse the title IV, HEA program funds for which the student is eligible; and

(ii) Presuming the funds were disbursed, the student would have a credit balance under paragraph (e) of this section.

(2) The amount the institution provides to the Federal Pell Grant eligible student to obtain or purchase books and supplies is the lesser of the presumed credit balance under this paragraph or the amount needed by the student, as determined by the institution.

(3) The institution must have a policy under which a Federal Pell Grant eligible student may opt out of the way the institution provides for the student to obtain or purchase books and supplies under this paragraph.

(4) If a Federal Pell Grant eligible student uses the way provided by the institution to obtain or purchase books and supplies under this paragraph, the student is considered to have authorized the use of title IV, HEA funds and the institution does not need to obtain a written authorization under paragraph (d)(1)(iv) of this section and § 668.165(b) for this purpose.

* * * * *

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

■ 27. The authority citation for part 682 is revised to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

§ 682.200 [Amended]

■ 28. Section 682.200(a)(2) is amended by adding, in alphabetical order, the term "Credit hour".

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

■ 29. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1070g, 1087a, *et seq.,* unless otherwise noted.

■ 30. Section 685.102 is amended by:

■ A. In paragraph (a)(2), adding, in alphabetical order, the term "Credit hour".

■ B. In paragraph (b), adding, in alphabetical order, the definition of *Payment data* to read as follows:

§ 685.102 Definitions.

* * * * *

(b) * * *

Payment data: An electronic record that is provided to the Secretary by an institution showing student disbursement information.

* * * * *

■ 31. Section 685.301 is amended by revising paragraph (e)(1) to read as follows:

§ 685.301 Origination of a loan by a Direct Loan Program school.

* * * * *

(e) * * *

(1) 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.

* * * * *

PART 686—TEACHER EDUCATION ASSISTANCE FOR COLLEGE AND HIGHER EDUCATION (TEACH) GRANT PROGRAM

■ 32. The authority citation for part 686 continues to read as follows:

Authority: 20 U.S.C. 1070g, *et seq.,* unless otherwise noted.

■ 33. Section 686.2 is amended by:
■ A. In paragraph (a), adding, in alphabetical order, the term "Credit hour".
■ B. In paragraph (d), revising the definition of *Payment Data* to read as follows:

§ 686.2 Definitions.

* * * * *

(d) * * *

Payment Data: An electronic record that is provided to the Secretary by an institution showing student disbursement information.

* * * * *

■ 34. Section 686.37 is amended by revising paragraph (b) to read as follows:

§ 686.37 Institutional reporting requirements.

* * * * *

(b) 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.

* * * * *

PART 690—FEDERAL PELL GRANT PROGRAM

■ 35. The authority citation for part 690 continues to read as follows:

Authority: 20 U.S.C. 1070a, 1070g, unless otherwise noted.

§ 690.2 [Amended]

■ 36. Section 690.2 is amended by:
■ A. In paragraph (a), adding, in alphabetical order, the term "Credit hour".
■ B. In paragraph (b), adding, in alphabetical order, the terms "Institutional student information record (ISIR)", "Student aid report (SAR)", "Valid institutional student information record (valid ISIR)", and "Valid student aid report (valid SAR)".
■ C. In paragraph (c), by removing the definitions for the terms "Institutional Student Information Record (ISIR)", "Student Aid Report (SAR)", "Valid Institutional Student Information Record (valid ISIR)", and "Valid Student Aid Report".

§ 690.61 [Amended]

■ 37. Section 690.61 is amended by:
■ A. In the paragraph (b) heading, adding the word "Valid" before the words "Student Aid Report" and before the words "Institutional Student Information Record".
■ B. In the paragraph (b) introductory text, adding the word "valid" before the word "SAR".

PART 691—ACADEMIC COMPETITIVENESS GRANT (ACG) AND NATIONAL SCIENCE AND MATHEMATICS ACCESS TO RETAIN TALENT GRANT (NATIONAL SMART GRANT) PROGRAMS

■ 38. The authority citation for part 691 continues to read as follows:

Authority: 20 U.S.C. 1070a–1, unless otherwise noted.

§ 691.2 [Amended]

■ 39. Section 691.2(a) is amended by adding, in alphabetical order, the term "Credit hour".

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

Appendix A—Regulatory Impact Analysis

Executive Order 12866

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether the regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the OMB. Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may (1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an "economically significant" rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order.

Pursuant to the terms of the Executive order, we have determined that this regulatory action will have an annual effect on the economy of more than $100 million. Therefore, this action is "economically significant" and subject to OMB review under section 3(f)(1) of Executive Order 12866. Notwithstanding this determination, we have assessed the potential costs and benefits—both quantitative and qualitative—of this regulatory action and have determined that the benefits justify the costs.

Need for Federal Regulatory Action

Student debt is more prevalent and individual borrowers are incurring more debt than ever before. Twenty years ago, only one in six full-time freshmen at four-year public colleges and universities took out a Federal student loan; now more than half do. Today, nearly two-thirds of all graduating college seniors carry student loan debt. The availability of Federal student aid allows students to access post-secondary educational opportunities crucial for obtaining employment. It is therefore important for the Department to have a strong regulatory foundation on which to build to protect student aid funds. The fourteen provisions described in this *Regulatory Impact Analysis* represent a broad set of regulations and definitions that strengthen the Federal student aid programs by protecting students from aggressive and misleading recruiting practices, providing consumers with better information about the effectiveness of career college and training programs, and ensuring that only eligible students or programs receive title IV, HEA aid.

These regulations are needed to implement provisions of the HEA, as amended by the HEOA, particularly related to (1) Programs that prepare students for gainful employment, (2) incentive compensation, (3) satisfactory academic progress policies, and (4) verification of information on student aid applications. These regulations also would implement changes made by the HEOA to provisions related to ability to benefit options. A description of the regulations, the reasons for adopting them, and an analysis of their effects were presented in the NPRM published on June 18, 2010. The NPRM included a *Regulatory Impact Analysis* and this section updates that analysis and describes changes to the proposed regulations that we considered in response to comments received and our reasons for adopting or rejecting them.

Regulatory Alternatives Considered

The Department considered a number of regulatory alternatives as part of the rulemaking process. These alternatives were described in detail in the preamble to the NPRM under both the *Regulatory Impact Analysis* and the *Reasons* sections accompanying the discussion of each proposed regulatory provision. To the extent that the Department has addressed alternatives in response to comments received on the NPRM, these are discussed elsewhere in the preamble to these final regulations under the *Analysis of Comments and Changes* section.

As discussed in the *Analysis of Comments and Changes* section, these final regulations reflect decisions reached through negotiated rulemaking, statutory amendments included in the HEOA, and revisions in response to public comments. In many cases, these revisions were technical in nature and intended to address drafting issues or provide additional clarity.

While we received many comments relating to the validation of high school diplomas and written arrangements, for the reasons we describe elsewhere in this preamble, we did not make any changes to those provisions.

In response to comments related to disbursement of funds to Pell Grant recipients for books and supplies, § 668.164(i) has been revised to specify that an institution must have a policy under

which a student may opt out of the way the institution provides for the student to purchase books and supplies by the seventh day of classes of a payment period. In addition, § 668.164(i) has been revised to specify that if a Federal Pell Grant eligible student uses the method provided by the institution to purchase books and supplies, the student is considered to have authorized the use of title IV, HEA funds and the institution does not need to obtain a written authorization under § 668.164(d)(1)(iv) and § 668.165(b) for this purpose only.

We also have updated the definition of *full-time student* to provide that a student's enrollment status for a term-based program may include repeating any coursework previously taken in the program but may not include more than one repetition of a previously passed course, or any repetition of a previously passed course due to the student's failing other coursework. The only change we have made to the satisfactory academic progress provisions has been to revise § 668.34(a)(3)(ii) to provide that, for programs longer than an academic year in length, satisfactory academic progress is measured at the end of each payment period or at least annually to correspond to the end of a payment period.

As discussed in the *Analysis of Comments and Changes,* the majority of the comments related to the Return of Title IV, HEA funds opposed the proposed changes or requested a delay in the effective date of this provision to allow further input from the community. Commenters were concerned with the burden on institutions, the potential harm to students who might withdraw after one module but return within the same payment period or period of enrollment, and the targeting of certain programs. In response to these comments, we revised § 668.22(a)(2) to provide that a student is not considered to have withdrawn if the student ceased attending the modules he or she was scheduled to attend, but the institution obtains a written confirmation from the student at the time of the withdrawal that he or she will attend a module that begins later in the same payment period or period of enrollment. This will provide more flexibility for a student who provides the authorization. This confirmation must be obtained at the time of withdrawal even if the student has already registered for subsequent courses. However, these final regulations provide that, for nonterm and nonstandard-term programs, a confirmation is valid only if the module the student plans to attend begins no later than 45 calendar days after the end of the module the student ceased attending.

Some additional technical and clarifying changes were made, including revising § 668.22(f)(2)(ii) to clarify that, when determining the percentage of payment period or period of enrollment completed, the total number of calendar days in a payment period or period of enrollment does not include, for a payment period or period of enrollment in which any courses in the program are offered in modules, any scheduled breaks of at least five consecutive days when the student is not scheduled to attend a module or other course offered during that period of time. In response to commenters' requests, we have included in the *Analysis of Comments and Changes* examples of scenarios for return of title IV, HEA program funds.

We received extensive comments on the provisions related to the definition of a *credit hour.* Some of these comments supported the Department's efforts and pointed out that many institutions and others, including States, are already following the definition or a comparable standard that would require only a minimal adjustment. As described in the *Analysis of Comments and Changes* section, other commenters opposed the definition of a *credit hour* and expressed concern that it would stifle innovation, especially in delivery methods, undermine the American higher education system, emphasize "seat-time", and interfere in a core academic issue. The Department maintains that the credit-hour definition is intended to provide a minimum, consistent standard for all institutions in determining the amount of student work necessary to award credit hours equitably for Federal program purposes. In response to the discussion of the credit hour provision, we have revised the definition of *credit hour* to clarify the basic principles applied in the proposed definition of a *credit hour* and have specified further in the definition that it is the institution's responsibility to determine the appropriate credit hours or equivalencies. We also have revised the credit-hour definition to clarify that the amount of work specified is a minimum standard with no requirement for the standard to be exceeded.

With respect to the provisions relating to misrepresentation, we have revised § 668.72(c) to prohibit false, erroneous, or misleading statements concerning whether completion of an educational program qualifies a students for licensure or employment in the States in which the educational program is offered and not just the State in which the institution is located. Additionally, we have revised § 668.72(n) to specify that a failure to disclose that the degree requires specialized accreditation is a misrepresentation. To address concerns over liability for third-party statements, we agreed to limit the reach of the ban on making substantial misrepresentations to statements made by any ineligible institution, organization, or person with whom the eligible institution has an agreement to provide educational programs or those that provide marketing, advertising, recruiting, or admissions services. We revised the definition of *misleading statement* in § 668.71(c) to remove the word "capacity" from the phrase "capacity, likelihood, or tendency to deceive or confuse."

We received numerous comments regarding the incentive compensation provisions in the NPRM. Some of these comments supported the proposed changes due to the conflict of interest between an enrollment professional's ethical obligations and financial interest. Other commenters opposed the changes, questioning the Department's legal authority to regulate, whether there was sufficient evidence to support the regulations, and the reasoning for the policy changes. We maintain that the elimination of the 12 "safe harbors" in § 668.14(b)(22) is needed to ensure program integrity, protect students, and align institutional practices with the goals intended by Congress. The Department did make a few clarifying changes. For example, the changes to § 668.14(b) based on comments include: (i) Adding "in any part" to § 668.14(b)(22) when referring to incentive payments to eliminate confusion that a portion of an individual's compensation may be based on enrollments or the award of financial aid; (ii) revising the regulations to provide that an employee who receives multiple compensation adjustments in a calendar year and is engaged in any student enrollment or admission activity or in making decisions regarding the award of title IV, HEA program funds is considered to have received such adjustments based on securing enrollment or the award of financial aid if those adjustments create compensation that is based in any part, directly or indirectly, upon success in securing enrollments or the award of financial aid; (iii) revising § 668.14(b)(22)(ii) to provide that eligible institutions, organizations that are contractors to eligible institutions, and other entities may make merit-based adjustments to employee compensation provided that such adjustments are not based in any part, directly or indirectly, upon success in securing enrollments or the award of financial aid; (iv) confirming that prohibited incentive compensation includes any commission, bonus, or other incentive payment; (v) providing that profit sharing and bonuses are not prohibited as long as they are based on an institutional goal and distributed to all employees who have otherwise contributed to satisfaction of a particular institutional goal; and (vi) revising the definition of *securing enrollments or the award of financial aid* to provide more detail and to clarify that it includes activities through the completion of an educational program.

The reporting and disclosure requirements related to gainful employment have also been updated in response to comments and further evaluation by the Department. We confirmed that the reporting and disclosure requirements apply only to programs subject to the gainful employment regulations and revised § 668.6(a) to require the reporting of CIP code and other information not only for program completers, but for all students who attend gainful employment programs. We also removed proposed § 600.4(a)(4)(iii) and revised § 600.4(a)(4)(i)(c) to clarify the programs subject to the regulations. The time period for which information has to be provided has been changed so that an institution must report the required information for each student, who during the award year beginning July 1, 2006, and for any subsequent award year, began attending or completed a program under § 668.8(c)(3) or (d).

In addition to the student identifiers, CIP codes, program completion dates, and private education loan and institutional financing amounts specified in the NPRM, institutions will also have to report the name of the program and whether the student matriculated to a higher credentialed program at the institution or if available,

evidence that the student transferred to a higher credentialed program at another institution. To ensure the information is accessible, § 668.6(b) has been revised to require an institution to provide a prominent and direct link to information about a program on the home page of its Web site and on other pages where general, academic, or admissions information is provided about the program. The information must also be provided in promotional materials conveyed to prospective students. The information must be provided in a simple and meaningful manner. The information to be disclosed includes the on-time graduation rate, the total amount of tuition and fees the institution charges a student for completing the program within normal time, the typical costs for books and supplies, unless included as part of tuition and fees, and the amount of room and board, if applicable. The institution may include information on other costs, such as transportation and living expenses, but must provide a Web link or access to the program cost information it makes available under § 668.43(a). The Department intends to develop in the future a disclosure form and will be seeking public comment about the design of the form through the information collection process under the Paperwork Reduction Act of 1995 (PRA). Until a form is developed and approved under the PRA process, institutions must comply with the disclosure requirements independently.

Another area of disclosure is providing students information about potential occupations by linking to O*Net. Commenters expressed concern that this would require an unwieldy amount of data for some degree programs and the resulting information overload would not serve to accurately inform students. Section 668.6(b) has been revised so that if the number of occupations related to the program, as identified by entering the program's full six digit CIP code on the O*NET crosswalk at *http://online.onetcenter.org/crosswalk/* is more than ten, an institution is allowed to provide prospective students with Web links to a representative sample of the SOCs for which its graduates typically find employment within a few years after completing the program.

In response to comments that the proposed placement rate was administratively complex and overly burdensome, we decided to direct the National Center for Education Statistics (NCES) to develop a placement rate methodology and the processes necessary for determining and documenting student employment and reporting placement data to the Department using IPEDS no later than July 1, 2012. The collaborative process used by NCES and the opportunity for public comment on the proposed measure will allow for a considered review and development of a meaningful placement rate. Section 668.6(b) has been revised to specify that an institution must disclose for each program the placement rate calculated under a methodology developed by its accrediting agency, State, or NCES. The institution would have to disclose the accrediting agency or State-required placement rate beginning on July 1, 2011 and to identify the accrediting agency or State under whose requirements the rate was calculated. The NCES-developed rate would have to be disclosed when the rates become available.

To remove uncertainty and to ensure a consistent calculation, we have revised § 668.6(b) to specify how an institution calculates an on-time completion rate for its programs. This is a measure designed to provide students meaningful information about the extent to which former students completed the program within the published length. As described elsewhere in this preamble, the on-time completion rate will be calculated by: (1) Determining the number of students who completed the program during the most recently completed calendar year; (2) determining the number of students in step (1) who completed the program within normal time, regardless of whether the students transferred into the program or changed programs at the institution; and (3) dividing the number of students who completed in normal time in step (2) by the total number of completers in step (1) and multiplying by 100.

We also received comments about the use of median loan debt, the definition of *private loans,* and the treatment of debt incurred at prior programs or institutions. The examples that we provide earlier in this preamble clarify the treatment of loan debt from prior programs and institutions. In general, median loan debt for a program at an institution does not include debt incurred by students in attending a prior institution, unless the prior and current institutions are under common ownership or control or are otherwise related entities. In cases where a student changes programs while attending an institution or matriculates to a higher credentialed program at the institutions, the Department will associate the total amount of debt incurred by the student to the program the student completed. In order to perform the calculation of the median loan debt, § 668.6(a) has been revised to provide that an institution must provide information about whether a student matriculated to a higher credentialed program at the same institution, or, if it has evidence, that a student transferred to a higher credentialed program at another institution.

The provisions related to State authorization generated comments from those who supported the regulations as an effort to address fraud and abuse in Federal programs through State oversight and from others who believed the regulations infringed on States' authority and upset the balance of the "Triad" of oversight by States, accrediting agencies, and the Federal Government. We clarified that the final regulations do not mandate that a State create any licensing agency for purposes of Federal program eligibility as an institution may be legally authorized by the State based on methods such as State charters, State laws, State constitutional provisions, or articles of incorporation that authorize an entity to offer educational programs beyond secondary education in the State.

We revised § 600.9 to clarify that an institution's legal authority to offer postsecondary education in a State must be by name and, thus, it must include the name of the institution being authorized. We have removed proposed § 600.9(b)(2) regarding adverse actions. In response to concerns about the effect on distance education and reciprocity arrangements, we clarified that an institution must meet any State requirements for it to be legally offering distance or correspondence education in that State and must be able to document to the Secretary the State's approval upon request. Thus, a public institution is considered to comply with § 600.9 to the extent it is operating in its home State, and, if operating in another State, it would be expected to comply with the requirements, if any, the other State considers applicable or with any reciprocal agreement that may be applicable. In making these clarifications, we are not preempting any State laws, regulations, or other requirements regarding reciprocal agreements, distance education, or correspondence study.

We also have revised the State authorization provisions in § 600.9 to distinguish between a legal entity that is established as an educational institution and one established as a business or nonprofit entity. An institution authorized as an educational institution may be exempted by name from any State approval or licensure requirements based on the institution's accreditation by an accrediting agency recognized by the Secretary or based on the institution being in operation for at least 20 years. An institution established as a business or nonprofit charitable organization and not specifically as an educational institution may not be exempted from the State's approval or licensure requirements based on accreditation, years in operation, or other comparable exemption. Chart A illustrates the basic principles of § 600.9 of these final regulations, with additional examples discussed in the preamble to these regulations.

CHART A—STATE AUTHORIZATION REQUIREMENTS

[Meets state authorization requirements*]

Legal entity	Entity description	Approval or licensure process
Educational institution	A public, private nonprofit, or for-profit institution established by name by a State through a charter, statute, or other action issued by an appropriate State agency or State entity as an educational institution authorized to operate educational programs beyond secondary education, including programs leading to a degree or certificate.	The institution must comply with any applicable State approval or licensure process and be approved or licensed by name, and may be exempted from such requirement based on its accreditation, or being in operation at least 20 years, or use both criteria.
Business	A for-profit entity established by the State on the basis of an authorization or license to conduct commerce or provide services.	The State must have a State approval or licensure process, and the institution must comply with the State approval or licensure process and be approved or licensed by name.
Charitable organization	A nonprofit entity established by the State on the basis of an authorization or license for the public interest or common good.	An institution in this category may not be exempted from State approval or licensure based on accreditation, years in operation, or a comparable exemption.

***Notes:**

- Federal, tribal, and religious institutions are exempt from these requirements.
- A State must have a process, applicable to all institutions except tribal and Federal institutions, to review and address complaints directly or through referrals.
- The chart does not take into requirements related to State reciprocity.

To maintain the State's role in student consumer protection and handling student complaints related to State laws, we have revised § 668.43(b) to provide that an institution must make available to students or prospective students contact information for not only the State approval or licensing entities but also any other relevant State official or agency that would appropriately handle a student's complaint.

Finally, we have clarified the meaning of a religious institution for the applicability of the religious exemption. We also have expanded § 600.9(b) to provide that an institution is considered to be legally authorized by the State if it is exempt from State authorization as a religious institution by State law, in addition to the provision of the proposed regulations that an institution be exempt from State authorization as a religious institution under the State's constitution. We also have included a definition of a *religious institution* providing that an institution is considered a religious institution if it is owned, controlled, operated, and maintained by a religious organization lawfully operating as a nonprofit religious corporation and awards only religious degrees or religious certificates including, but not limited to, a certificate of Talmudic studies, an associate of biblical studies, a bachelor of religious studies, a master of divinity, or a doctor of divinity.

In response to comments, we confirmed that tribal institutions are not subject to State oversight or subject to the State process for handling complaints and revised § 600.9 to clarify the status of tribal institutions. As noted in the preamble discussion of State Authorization, we have removed proposed § 600.9(b)(2) regarding adverse actions. Further, we are providing that, in § 600.9(a)(2)(ii) of the final regulations, the tribal government must have a process to review and appropriately act on complaints concerning a tribal institution and enforce applicable tribal requirements or laws.

Finally, while the Secretary has designated amended § 600.9(a) and (b) as being effective July 1, 2011, we recognize that a State may be unable to provide appropriate State authorizations to its institutions by that date. We are providing that the institutions unable to obtain State authorization in that State may request a one-year extension of the effective date of these final regulations to July 1, 2012, and if necessary, an additional one-year extension of the effective date to July 1, 2013. To receive an extension of the effective date of amended § 600.9(a) and (b) for institutions in a State, an institution must obtain from the State an explanation of how a one-year extension will permit the State to modify its procedures to comply with amended § 600.9.

As discussed in the preamble to these regulations, we made a number of clarifying changes to the regulations regarding the administration of ability to benefit tests. We revised the definition of the term *independent test administrator* to clarify that an independent test administrator must have no current or prior financial or ownership interest in the institution, its affiliates, or its parent corporation, other than the fees earned through the agreement to administer the test. In § 668.142, we have defined an ATB test irregularity as an irregularity that results from an ATB test being administered in a manner that does not conform to the established regulations for test administration consistent with the provision of subpart J and the test administrator's manual. We also added a provision to specify that a test publisher may include with its application a description of the manner in which test-taking time was determined in relation to the other requirements in § 668.146(b). We have revised § 668.150(b)(7)(i) to indicate that the period of review of all test results of the tests administered by a decertified test administrator is five years preceding the date of decertification.

In response to a comment regarding testing of non-native speakers of English, we have revised § 668.153 to provide that if a non-native speaker of English who is enrolled or plans to enroll in a program that will be taught in his or her native language with a component or portion in English, the individual must take a test approved under §§ 668.146 and 668.148(a)(1) in the student's native language. New § 668.153(a)(5) provides that prior to the beginning of the English portion of the program, the individual must take an English proficiency test approved under § 668.148(b). Finally, we have modified § 668.144(c)(11)(vii) to require that the test manual include, in addition to guidance on the interpretation of scores resulting from modification of the test for individuals with disabilities, guidance on the types of accommodations that are allowable. This responds to concerns that test administrators may not have extensive training or experience to determine if a requested accommodation is appropriate.

The effect of these changes on the cost estimates prepared for and discussed in the *Regulatory Impact Analysis* of the NPRM is discussed in the *Costs* section of this *Regulatory Impact Analysis.*

Benefits

As discussed in the NPRM, benefits provided in these regulations include updated administrative procedures for the Federal student aid programs; a definition and process to determine the validity of a student's high school diploma; enhanced reliability and security of ATB tests; an additional option for students to prove ability to benefit by successfully completing college coursework; increased clarity about incentive compensation for employees at institutions of higher education; reporting of information on program completers for programs leading to gainful employment, including costs, debt levels, graduation rates, and placement rates; the establishment of minimum standards for credit hours; greater transparency for borrowers participating in the programs offered under written agreements between institutions; greater detail about misrepresentation in marketing and recruitment materials; a more structured and

consistent approach to the development and implementation of satisfactory academic progress policies; updated and simplified procedures for verifying FAFSA applicant information; updated regulations related to the return of title IV, HEA funds when a student withdraws; harmonization of Direct Loan and Teach Grant disbursement procedures with other title IV, HEA programs; and revised disbursement requirements to ensure Federal Pell Grant recipients can access funds in a timely manner. As noted in the *Regulatory Impact Analysis* in the NPRM, these provisions result in no net costs to the Federal Government over 2011–2015.

Costs

As discussed in the *Regulatory Impact Analysis* in the NPRM, many of the provisions implemented through these regulations will require regulated entities to develop new disclosures and other materials, as well as accompanying dissemination processes. Other regulations generally will require discrete changes in specific parameters associated with existing guidance and regulations—such as changes to title IV, HEA disbursement procedures, updated processes for verification of FAFSA application information, clearer standards for the return of title IV, HEA program funds following a student's withdrawal, and updated definitions and processes for confirming the validity of a high school diploma—rather than wholly new requirements. Accordingly, entities wishing to continue to participate in the title IV, HEA programs have already absorbed many of the administrative costs related to implementing these regulations. Marginal costs over this baseline are primarily due to new procedures that, while possibly significant in some cases, are an unavoidable cost of continued program participation.

In assessing the potential impact of these regulations, the Department recognizes that certain provisions are likely to increase workload for some program participants. This additional workload is discussed in more detail under the *Paperwork Reduction Act of 1995* section of this preamble. Additional workload would normally be expected to result in estimated costs associated with either the hiring of additional employees or opportunity costs related to the reassignment of existing staff from other activities. In total, these changes are estimated to increase burden on entities participating in the title IV, HEA programs by 6,010,320 hours. Of this increased burden, 3,862,165 hours are associated with institutions and 9,454 hours with ATB test publishers, States, and ATB test administrators. An additional 2,138,701 hours are associated with borrowers, generally reflecting the time required to read new disclosures or submit required information.

As detailed in the *Paperwork Reduction Act of 1995* section of these final regulations, the additional paperwork burden is attributable to several provisions, with the greatest additional burden coming from the revised FAFSA verification process. Of the 3.9 million hours of additional burden associated with institutions, 1.8 million relate to FAFSA verification. While the average number of items to be verified is expected to decrease, the growth in the number of applicants and the requirement to submit all changes to the Department is estimated to increase overall burden. Other paperwork burden increases include the following:

- 750,725 hours related to academic reviews and development of academic plans under § 668.34;
- 425,075 hours related to calculation of unearned amounts when a student withdraws under § 668.22;
- 262,990 hours associated with updating marital and dependency status under § 668.55;
- 376,417 hours annually and an additional 300,773 hours in the initial reporting period related to the gainful employment reporting and disclosure provisions in § 668.6;
- 48,391 hours related to ATB test administration and reporting under §§ 668.151 and 668.152;
- 67,870 hours associated with disclosure of information about an institution's written agreements in § 668.43;
- 54,366 hours related to disbursement of funds to Pell Grant recipients for books and supplies under § 668.164;
- 21,982 hours related to the development of a high school diploma validation process and the validation of questionable diplomas under § 668.16; and
- 18,349 hours related to clock hour to credit hour conversion and the inclusion of outside work for program eligibility under § 668.8.

For ATB test publishers, States, and administrators, the increased burden of 9,454 hours comes from the reporting, record-keeping, test anomaly analysis, and other requirements in §§ 668.144, 668.150, and 668.151. The increased burden on students is concentrated in the FAFSA verification and status updating processes with 1,604,800 hours under §§ 668.55, 668.56, and 668.59, with additional burden associated with the withdrawal process under § 668.22 and satisfactory academic progress policies under § 668.34.

Thus, for the specific information collections listed in the *Paperwork Reduction Act of 1995* section of these final regulations, the total cost estimates are as follows:

- For Information Collection 1845–0041, the total cost will be $72,594,870;
- For Information Collection 1845–NEW2, the total cost attributable to these regulatory changes will be $21,834,272;
- For Information Collection 1845–0022, the total cost will be $15,533,671;
- For Information Collection 1845–NEW1, the total cost attributable to the regulatory changes will be $9,543,677 annually with an additional $7,624,784 in the initial reporting period;
- For Information Collection 1845–0049, the total cost will be $1,300,595; and
- For Information Collection 1845–NEW3, the total cost attributable to these regulatory changes will be $1,203,799.

The monetized cost of this additional burden, using wage data developed using Bureau of Labor Statistics available at *http://www.bls.gov/ncs/ect/sp/ecsuphst.pdf,* is $122,010,883, of which $86.7 million is associated with institutions, $0.21 million with ATB test publishers, States, and administrators, and $35.07 million with borrowers. For institutions, test publishers, and test administrators, an hourly rate of $22.14 was used to monetize the burden of these provisions. This was a blended rate based on wages of $16.79 for office and administrative staff and $38.20 for managers, assuming that office staff would perform 75 percent of the work affected by these regulations. For the gainful employment provision, an hourly rate of $25.35 was used to reflect increased management time to establish new data collection procedures associated with that provision. For students, the first quarter 2010 median weekly earnings for full-time wage and salary workers were used. This was weighted to reflect the age profile of the student loan portfolio, with half at the $457 per week of the 20 to 24 age bracket and half at the $691 per week of the 25 to 34 year old bracket. This resulted in a $16.40 hourly wage rate to use in monetizing the burden on students.

Because data underlying many of these burden estimates was limited, in the NPRM, the Department requested comments and supporting information for use in developing more robust estimates. In particular, we asked institutions to provide detailed data on actual staffing and system costs associated with implementing these regulations. In response to comments that the regulations would be costly, we reviewed the wage rates for more recent information and the share of work performed by office workers and management and professional staff. This increased the general wage rate from $18.63 to $22.14 and the wage rate for gainful employment related matters from $20.71 to $25.35. The other areas that changed between the NPRM published on June 18, 2010 and these final regulations related to changes to the disclosure requirements related to gainful employment that extended the reporting to students who began or completed programs beginning July 1, 2006, required specified information for all students at a program, and established a requirement to report on student matriculations to higher credentialed programs.

Net Budget Impacts

These regulations are estimated to have no net budget impact over FY 2011–2015. 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.)

These estimates were developed using the Office of Management and Budget's Credit Subsidy Calculator. This calculator will also be used for re-estimates of prior-year costs, which will be performed each year beginning in FY 2009. The OMB 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 governmentwide 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, however, 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 impact these regulations would have 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: Two-year proprietary institutions, two-year public and private, not-for-profit institutions; freshmen and sophomores at four-year institutions, juniors and 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.

The Department estimates no budgetary impact for most of these regulations as there is no data indicating that the provisions will have any impact on the volume or composition of the title IV, HEA programs.

Assumptions, Limitations, and Data Sources

The impact estimates provided in the preceding section reflect a pre-statutory baseline in which the HEOA changes implemented in these regulations do not exist. Costs have been quantified for five years.

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, the 1994 National Education Longitudinal Study, and the 1996 Beginning Postsecondary Student Survey. Data from other sources, such as the U.S. Census Bureau, were also used. Data on administrative burden at participating institutions are extremely limited; accordingly, in the NPRM, the Department expressed interest in receiving comments in this area. No comments were received.

Elsewhere in this **SUPPLEMENTARY INFORMATION** section we identify and explain burdens specifically associated with information collection requirements. See the heading *Paperwork Reduction Act of 1995.*

Accounting Statement

As required by OMB Circular A–4 (available at *http://www.Whitehouse.gov/omb/Circulars/a004/a-4.pdf*), in Table 2, 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 2—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES

[In millions]

Category	Transfers
Annualized Monetized Costs.	$126.1. Cost of compliance with paperwork requirements.
Annualized Monetized Transfers.	$0.
From Whom To Whom?	Federal Government To Student Loan Borrowers.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. These regulations will affect institutions that participate in title IV, HEA programs, ATB test publishers, and individual students and loan borrowers. The U.S. Small Business Administration 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, and defines non-profit institutions as small organizations if they are independently owned and operated and not dominant in their field of operation, or if they are institutions controlled by governmental entities with populations below 50,000.

Data from the Integrated Postsecondary Education Data System (IPEDS) indicate that roughly 4,379 institutions participating in the Federal student assistance programs meet the definition of "small entities." The following table provides the distribution of institutions and students by revenue category and institutional control.

Revenue category	Public		Private NFP		Proprietary		Tribal	
	Number of schools	Number of students	Number of schools	Number of students	Number of schools	Number of students	Number of schools	Number of students
$0 to $500,000	43	2,124	103	13,208	510	38,774	.....	.....
$500,000 to $1 million	44	7,182	81	9,806	438	61,906	1	137
$1 million to $3 million	98	29,332	243	65,614	745	217,715	3	555
$3 million to $5 million	75	65,442	138	60,923	303	182,362	.....	.....
$5 million to $7 million	49	73,798	99	62,776	224	185,705	5	2,525
$7 million to $10 million	78	129,079	110	84,659	228	235,888	9	4,935
$10 million and above	*1,585*	*18,480,000*	*1,067*	*4,312,010*	*383*	*1,793,951*	*14*	*18,065*
Total	1,972	18,786,957	1,841	4,608,996	2,831	2,716,301	32	26,217

Approximately two-thirds of these institutions are for-profit schools subject to the disclosure and reporting requirements related to programs leading to gainful employment. Other affected small institutions include small community colleges and tribally controlled schools. For these institutions, the new disclosure and administrative requirements imposed under the regulations could impose some new costs as described below. The impact of the

regulations on individuals is not subject to the Regulatory Flexibility Act.

As discussed in the preamble to these regulations, the program integrity regulations were developed to update administrative procedures for the Federal student aid programs and to ensure that funds are provided to students at eligible programs and institutions. As detailed in the *Paperwork Reduction Act of 1995* section of these final regulations, many of these regulations modify existing regulations and requirements. For example, the regulations on FAFSA verification would change the number of items to be verified, but do not require the creation of a new process. The table below summarizes the estimated total hours, costs, and requirements applicable to small entities from these provisions on an annual basis. In the initial reporting period, there will be an additional 235,866 hours and $5,979,203 in gainful employment reporting for award years back to 2006–07.

Provision & requirement	Reg. section	OMB control No.	Hours	Costs
Gainful Employment	668.6	1845–NEW1	295,186	7,482,964
Annual submission of private loan, CIP, program name, further matriculation, and identifying data for entrants and completers by program	668.6(a)		288,597	7,315,937
Disclose occupational information, graduation rates, on-time completion rates, program placement rates, and program costs	668.6(b)		6,589	167,027
Eligible Program	668.8	1845–0022	8,800	194,836
Determine if program is affected, evaluate amount of outside student work that should be included, and perform credit to clock hour conversion.				
Standards of Administrative Capability	668.16	1845–0022	10,543	233,412
Develop a high school diploma validity process	668.16(p)		9,583	212,176
Verify questionable diplomas	668.16(p)		959	21,237
Student Withdrawal	668.22	1845–0022	203,866	4,513,593
Establish withdrawal date and calculate percentage of payment period or period of enrollment completed.				
Satisfactory Academic Progress	668.34	1845–NEW2	349,976	7,748,471
Review regulations and implement changes to ensure compliance	668.34(a)		8,214	181,860
Perform academic reviews at the end of each payment period	668.34(c)		100,382	2,222,451
Develop academic plan for students who do not achieve satisfactory academic progress when reviewed at end of payment period	668.34(c)		87,835	1,944,655
Perform academic reviews at institutions that do so annually	668.34(d)		81,891	1,813,061
Develop academic plan for students who do not achieve satisfactory academic progress when reviewed annually	668.34(d)		71,655	1,586,434
Institutional Information—Written Agreements	668.43	1845–NEW2	32,550	720,667
Disclose information about written agreements			32,122	711,185
Make contact information for filing complaints to accreditor and State approval or licensing agency available to enrolled and prospective students	668.43(b)		428	9,482
Updating Information	668.55	1845–0041	126,130	2,792,518
Update household size throughout award year			124,744	2,761,831
Update marital status throughout award year			1,386	30,687
Acceptable Documentation	668.57	1845–0041	293,515	6,498,427
Review verification responses for acceptable documentation.				
Consequences of a change in FAFSA information	668.59	1845–0041	587,030	12,996,853
Reduces tolerances and, if outside of tolerances, requires institutions to report all changes to applicants' FAFSA information resulting from verification.				
Recalculate applicant's EFC if information changes from verification.				
Administration of Ability to Benefit Tests	668.151	1845–0049	20,702	458,351
Keep records of individuals who take ATB tests and details about the administrator	668.151(g)(4)		18,484	402,242
Keep documentation of individual's disability and testing arrangements provided	668.151(g)(5)		2,218	49,110
Administration of Tests by Assessment Centers	668.152	1845–0049	2,506	55,487
Maintain the scored ATB tests and collect and submit copies of completed ATB tests or a listing to the test publisher or State weekly			14,415	319,145
Disbursing Funds	668.164	1845–NEW3	26,074	577,277
Provide a way for Pell Grant recipients to obtain or purchase required books and supplies by the 7th day of a payment period under certain conditions.				

To assess overall burden imposed on institutions meeting the definition of small entities, the Department developed a methodology using IPEDS data and the percentage of institutions with revenues below $7 million and all non-profit institutions, allocating approximately 66 percent of the paperwork burden to small institutions. Using this methodology, the Department estimates the regulations will increase total burden hours for these schools by 2.58 million, or roughly 590 hours per institution. Monetized using salary data from the Bureau of Labor Statistics, this burden is $58.1 million and $13,270, respectively. If calculated using the distribution of students from 2007–08, the share of the burden allocated to small institutions would be much lower at approximately 21 percent, resulting in an estimated burden of 235 hours and $5,410 per institution. Even the more conservative estimate of $13,270 represents one percent or less of the midpoint revenue

for all but the lowest revenue category, for which it is four percent of midpoint revenue.

For institutions, an hourly rate of $22.14 was used to monetize the burden of these provisions. This rate was a blended rate based on wages of $16.79 for office and administrative staff and $38.20 for managers, assuming that office staff would perform 75 percent of the work affected by these regulations. For the gainful employment provision, an hourly rate of $25.35 was used to reflect increased management time to establish new data collection procedures associated with that provision.

These rates are the same as those used for all institutions in the *Costs* section of this analysis, reflecting the fact that the primary cost of meeting the paperwork burden is in additional labor and that wages at small institutions should not be systematically higher than those at all institutions. In response to comments that the regulations would be costly, we reviewed the wage rates for more recent information and the share of work performed by office workers and management and professional staff. This review increased the general wage rate from $18.63 to $22.14 and the wage rate for gainful employment related matters from $20.71 to $25.35.

The costs discussed above represent the cost of the regulations in the first year of implementation, beginning on July 1, 2011, but several provisions will have a longer period to take effect. Most importantly, the regulations contained in subpart E of part 668, Verification and Updating of Student Aid Application Information, are effective July 1, 2012. These regulations account for approximately 50 percent of the estimated burden described above. We would expect 30 percent of the verification costs to be incurred in 2011 as institutions update their systems for the changes, but the main part of those costs will occur in the second year. These costs would occur after the other provisions had been implemented and, while we do not have a split between the development and ongoing costs of each provision, we would expect the costs to taper off as the institutions become familiar with the regulations and have the systems in place to comply. Seventy percent of the estimated costs for the Verification regulation would not be realized in the first year, reducing the overall projected costs for small institutions during the first year by approximately one-third to approximately $8,000. Assuming a 10 percent reduction in the costs of other provisions from reduced development costs and prior experience, full implementation in 2012 would cost approximately $11,000. The State authorization provision is also subject to a delayed implementation, but that implementation is not expected to have a significant cost effect on small entities. Additionally, the recurring costs of many of the provisions are based on the number of students enrolled. As shown above, schools with small revenues have lower enrollments than others classified as small entities and would have to perform fewer verifications and reviews on an ongoing basis. Since they already have some systems and processes in place to comply with the existing regulations, once the development changes have been made to implement the regulatory changes, we would expect their ongoing costs to be lower than the averages estimated above.

Where possible, the Department has allowed institutions flexibility to establish processes that fit the institution's administrative capabilities. For example, the requirement to distribute funds to Pell Grant recipients for books and supplies within seven days of the start of the payment period allows institutions to use book vouchers or a credit to the student's account. The Department has also tried to allow more time for all entities affected by these regulations to establish procedures for new data collections, such as the placement rate information required in the data collection related to gainful employment. While these timing provisions are available to all institutions, they should permit small institutions sufficient time to make the necessary adjustments. Approximately 60 percent of the paperwork burden associated with these regulations is in OMB 1845–0041, which relates to the updating of FAFSA application information and reporting all changes resulting from verification. These updated requirements will help ensure eligible students receive aid. As detailed in the *Paperwork Reduction Act of 1995* section of these final regulations, the increase in burden associated with the FAFSA acceptable documentation provision is largely driven by the increase in student applicants since the burden for these requirements was last calculated. Given the increase in the number of students applying for title IV, HEA aid, the number of verifications is estimated to have increased from 3.0 million in 2002–03 to 5.1 million in 2008–09. Without the regulatory changes reflected in these regulations, which are estimated to reduce the number of items to be verified, the paperwork burden on small institutions in OMB 1845–0041 would increase by an additional 195,677 hours. Based on these estimates, the Department believes the new requirements do not impose significant new costs on these institutions.

We considered whether there would be any benefit to allowing small institutions additional time to come into compliance with the regulations and concluded that there would be no benefit to taking such action. First and foremost, we think the risk of delaying implementation of these program integrity regulations and the resulting negative impact on students and taxpayers would be far too high.

Second, we do not believe the comments or the facts would support such action. In the NPRM, the Secretary invited comments from small institutions and other affected entities as to whether they believed the proposed changes would have a significant economic impact on them and requested evidence to support that belief. Several commenters indicated that the provisions would be costly and the Department reviewed the estimates as described above. However, commenters did not provide us with evidence to suggest that small institutions or entities would need additional time beyond July 1, 2011 to come into compliance with the regulations. Additionally, because we did not include such a proposal in the NPRM, we do not believe we could take this type of action without seeking further public comment.

Finally, we note that, where possible, we have built in additional time or flexibility for all institutions based on the nature of the provision and the data requested.

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Part III

Department of Housing and Urban Development

24 CFR Parts 91 and 92
Housing Trust Fund; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 91 and 92

[Docket No. FR–5246–P–02]

RIN 2506–AC30

Housing Trust Fund

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Proposed rule.

SUMMARY: The Housing and Economic Recovery Act of 2008 establishes a Housing Trust Fund (HTF) to be administered by HUD. The purpose of the HTF is to provide grants to State governments to increase and preserve the supply of rental housing for extremely low- and very low-income families, including homeless families, and to increase homeownership for extremely low- and very low-income families. This proposed rule submits, for public comment, the regulations that will govern the HTF.

DATES: *Comment due date:* December 28, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

- *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0001.
- *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Information Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Marcia Sigal, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Room 7162, Washington, DC 20410; telephone number 202–402–3002 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8389.

SUPPLEMENTARY INFORMATION:

I. Background

The Housing and Economic Recovery Act of 2008 (Pub. L. 110–289, approved July 30, 2008) (HERA) was major housing legislation enacted to reform and improve the regulation of Fannie Mae and Freddie Mac, the government-sponsored enterprises (GSEs), strengthen neighborhoods hardest hit by the foreclosure crisis, enhance mortgage protection and disclosures, and maintain the availability of affordable home loans. The reform of the GSEs is provided in the Federal Housing Finance Regulatory Reform Act of 2008, which is found in Division A, Title I of HERA. Section 1131 of the GSE-reform portion of HERA amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*) (FHEFSSA) to add a new section 1337 entitled "Affordable Housing Allocations" and a new section 1338 entitled "Housing Trust Fund."

Section 1337 of FHEFSSA provides for the HTF to be funded with amounts allocated by Fannie Mae and Freddie Mac. Proceeds equal to 4.2 basis points (.042%) of the GSEs' new mortgage purchases were to be partially diverted to fund the HTF. However, because the GSEs experienced significant declines in their respective capital reserves in 2008, under the authority granted to the Federal Housing Finance Agency (FHFA), the GSE's oversight agency, by Section 1367 of FHEFSSA, Fannie Mae and Freddie Mac were placed in conservatorship in September 2008. Under Section 1337 of FHEFSSA, the Director of the FHFA has the authority to suspend Fannie Mae's and Freddie Mac's contributions to the HTF if such contributions were to have an adverse impact on the financial stability of the GSEs. Shortly after being placed in conservatorship, the GSEs were instructed by the FHFA to suspend such contributions. However, Section 1338 of FHEFSSA provides that the HTF may be funded with amounts appropriated, transferred, or credited to the HTF under other provisions of law. Accordingly, HUD is proceeding with regulatory implementation of the HTF in anticipation of future funding through sources other than GSE proceeds.

Congress authorized the HTF with the stated purpose of: (1) Increasing and preserving the supply of rental housing for extremely low-income (ELI) families with incomes between 0 and 30 percent of area median income and very low-income (VLI) families with incomes between 30 and 50 percent of area median income, including homeless families, and (2) increasing homeownership for ELI and VLI families. HUD's periodic reports to Congress on worst-case needs for affordable rental housing document that shortages of affordable rental housing for ELI and VLI families have grown increasingly more severe. A household defined as experiencing worst-case housing needs means that the household has an income at or below 50 percent of the area median income, receives no housing assistance, and has a severe rent burden (paying more than half of its income for rent) and/or lives in severely inadequate conditions *(e.g.,* incomplete plumbing).

As of 2007, the combined number of ELI and VLI renters with worst-case housing needs was 5.9 million, or 37 percent of all ELI and VLI renters (15.9 million). Furthermore, 51 percent of ELI and VLI renters who lack housing assistance have worst-case housing needs. When the 2007 data are broken down further, worst-case needs

occurred to 47 percent of all ELI renters and 73 percent of ELI renters lacking housing assistance. By comparison, 24 percent of all VLI renters and 28 percent of VLI renters lacking housing assistance have worst-case housing needs. ELI renters are particularly burdened with severe housing problems.

There is a shortage of low-cost rental units, as builders and housing providers are unable to construct, finance, and operate a sufficient supply of rental housing affordable to ELI and VLI households. The result is that in 2007, for every 100 ELI renters nationwide, only 44 rental units were both affordable and available for rent or currently occupied by households in this income range. HUD notes that more than half of the 3.8 million ELI renters who occupied affordable units in 2007 were able to do so only because they reported receiving government rental assistance, such as from the public housing, project-based Section 8 or Section 202/811 programs, and the housing choice voucher program. Other units that would have been affordable may have been occupied by higher-income households. For every 100 VLI and ELI renters, on average, there were only 74 affordable units available. The HTF will provide funds to produce additional units affordable to ELI and VLI households with the greatest need, thus increasing the supply and reducing the most critical component of the existing shortage.

Housing Trust Fund—Formula Allocation

Section 1338 of FHEFSSA directs HUD to establish, through regulation, the formula for distribution of amounts made available for the HTF. The statute specifies that only certain factors are to be part of the formula, and assigns priority to certain factors. HUD's proposed formula for the allocation of HTF funds was submitted for public comment in a proposed rule published on December 4, 2009 (74 FR 63938). The allocation formula will be renumbered and published with the final program rule in §§ 92.710–92.714.

Housing Trust Fund—Administration of the Fund

In addition to the statutory direction to establish by regulation a formula for the allocation of HTF funds, section 1338 of FHEFSSA directs HUD to establish and manage the HTF, the purpose of which is to provide grants to States for use to: (1) Increase and preserve the supply of rental housing for ELI and VLI families, including homeless families; and (2) increase homeownership for ELI and VLI families. Section 1338 of FHEFSSA also directs HUD to establish regulations to administer the HTF, and this rule proposes the regulations that will govern the HTF.

II. This Proposed Rule

New 24 CFR Part 92 Subpart N

HUD proposes to codify the HTF regulations in a new subpart N of 24 CFR part 92. Part 92 contains the regulations for HUD's HOME Investment Partnerships program (HOME program). Established by the National Affordable Housing Act of 1992, the HOME program is the largest Federal block grant program that produces affordable housing for VLI households. The HOME program is similar in most aspects to the proposed HTF. Each year, the HOME program allocates approximately $2 billion to States and more than 600 localities nationwide. Since it inception in 1992, the HOME program has produced approximately one million units of affordable rental and homeownership units. Both programs provide funding through a formula allocation for rental housing production and homeownership. The HOME program provides formula grants that communities use, often in partnership with local nonprofit groups, to fund a wide range of activities that build, buy, and/or rehabilitate affordable housing units for rent or homeownership. The HTF will operate in substantially the same manner, with formula grants to States used to develop affordable housing units for rent or homeownership. In addition, the grant activities in both programs require the same grantee administration and HUD oversight functions.

While the HTF provides new resources targeted to producing affordable housing primarily for ELI households, an entirely new or different set of program regulations is not necessary in order to implement the statutory requirements of the HTF. Many of the program requirements applicable to the HOME program are applicable to the HTF. Further, each State is a participating jurisdiction in the HOME program, and all States and their designated housing entities will be the HTF grantees. Accordingly, it is HUD's position that codifying the HTF regulations in part 92 is a logical step that will enable HUD to: (1) Provide a coordinated "menu" of production programs that State and local governments can use to address the affordable housing needs of low-, very low- and extremely low-income households, including those with special needs, in their communities, and (2) simplify and streamline program requirements for grantees, and avoid making grantees create new or separate structures to administer HTF funds. Additionally, HUD believes that many grantees will use HTF funds in combination with HOME program funds to develop mixed-income housing, and many of the applicable requirements are the same for both programs (*e.g.,* administrative requirements; monitoring, site and neighborhood standards; and affirmative marketing). This approach is expected to expedite the expenditure of HTF funds and deliver more affordable housing sooner to households and communities.

HUD is specifically soliciting input from HTF grantees and interested parties on HUD's proposed coordination of HOME program and HTF regulations, as well as on additional or alternative ways to better coordinate and use HTF funds with funding from other Federal, State, local programs, or private sources typically used to produce mixed-income affordable housing developments.

The Department is embarking on a number of initiatives to incorporate and promote energy efficiency, transit-oriented development, and other sustainability features in the development of units and projects assisted with HUD funds. These efforts will help reduce the impact of the property on the environment and promote a healthier environment for building occupants, as well as reduce the costs of utilities to help make these units affordable. In addition, facilitating the inclusion of affordable housing for ELI and VLI households in transit-oriented development will help ensure that affordable housing is located in areas that are within walking distance of transit facilities and more easily accessible to essential area destinations such as jobs, and educational, retail, and health services. The HTF implements the Department's commitment to further sustainable affordable housing available for ELI households, by requiring energy and water-efficiency features in all HTF-assisted units. In addition, the proposed rule includes specific funding commitment definitions that address the need to commit HTF funds early in the development process of a Transit-Oriented Development (TOD) project.

HUD's efforts to promote energy-efficient homes directly reflect the Department's energy goal contained in its Fiscal Year (FY) 2010–15 Strategic Plan to "promote energy-efficient buildings and location-efficient communities that are healthy, affordable, and diverse." The proposed

energy and water efficiency requirements for the HTF are similar to those of several HUD energy-efficiency and green initiatives, such as the "Green" Community Housing Development Organization Notice Of Funding Availability (HOME Competitive Reallocation of CHDO Funds to Provide for Energy Efficient and Environmentally Friendly Housing for Low-Income Families), the Self-Help Homeownership Opportunity Program (SHOP) NOFA, and the Neighborhood Stabilization Program (NSP)–2 NOFA.

Fostering the development of sustainable, transit-oriented, mixed-use communities with HTF funds is consistent with the Livability Principles established by the Partnership for Sustainable Communities, an interagency collaboration between HUD, the Department of Transportation (DOT), and the Environmental Protection Agency (EPA). This partnership aims to coordinate Federal housing, transportation, and other infrastructure investments to provide communities with the resources they need to build more livable and sustainable communities, promote equitable development, and improve access to affordable housing. Each of the three agencies is responsible for incorporating the Livability Principles into its policies and programs, to the maximum extent feasible.

Energy-efficiency and transit-oriented development definitions and property standards for the HTF can be found in Sections 92.702 and 92.741–92.745, respectively. The following sections highlight key provisions of the HTF regulations established in accordance with section 1338 of FHEFSSA.

General Provisions

Sections 92.701–92.703 of new subpart N sets forth the general provisions applicable to the HTF.

Section 92.701 provides an overview of the statutory basis for the HTF, and identifies which subparts of part 92 are applicable to the HTF. To the extent that other sections or subparts of part 92 are applicable to the HTF, § 92.701 provides that references to "HOME" mean "HTF" and that references to "participating jurisdictions" mean "HTF grantees."

Definitions

Section 92.702 incorporates terms defined in the HOME program regulations (24 CFR 92.2) and defines terms that are specifically applicable to the HTF. Key definitions applicable to the HTF include the following:

Commitment. The definition of "commitment" implements the statutory requirement that HTF funds must be used or committed within 2 years of the formula allocation (grant award). Grantees must commit funds to a specific project pursuant to legally binding agreements that meet the requirements of written agreements in § 92.774. To facilitate TOD projects, the definition of "commitment" permits a unit of general local government to acquire the land for a TOD project in advance of having specific project plans. The definition of transit-oriented commitment would allow the acquisition of property without the requirement of having a specific project. The unit of general local government has 36 months from the date of acquisition of the property for a TOD project to commit additional funds to a specific project on the property. To discourage the use of this provision for acquisition of property for any purpose other than the development of HTF-assisted units as part of transit-oriented development, the local government where the development is to take place is required to hold title to the property. If no commitment to a specific HTF-assisted project occurs within 36 months from date of the acquisition of the property, the amount of HTF funds used to pay for the property, or the current value of the property, whichever is greater, must be repaid to the grantee's HTF account. The amount repaid will be prorated in proportion to the amount of HTF funds to total funds used to purchase the land.

Energy Efficiency. Several definitions are included in this rule that will help facilitate the development of energy-efficient residential units, including definitions of ENERGY STAR-Qualified New Homes and WaterSense-labeled products.

Grantee. The statute allows a State or State-designated entity to receive the HTF formula allocations. Each State may decide which agency within the State will be the HTF grantee. For example, in many States, there are multiple State agencies, as well as a State housing finance agency, that administer housing programs.

Recipient. An HTF recipient means an entity that receives HTF funds solely as a developer or owner of HTF-assisted housing. Section 1338(c)(9) of FHEFSSA requires an eligible recipient of a grant from a State's HTF formula allocation to have demonstrated experience and capacity to conduct an eligible activity, as evidenced by its ability to: (i) Own, construct, rehabilitate, manage, or operate an affordable multifamily rental housing development; (ii) design, construct, rehabilitate, or market affordable housing for homeownership; or (iii) provide forms of assistance, such as down payments, closing costs, or interest-rate buy-downs for purchasers.

Section 1338(c)(9) of FHEFSSA also requires an eligible recipient to demonstrate the ability and financial capacity to undertake, comply, and manage the eligible activity; demonstrate its familiarity with the requirements of any other Federal, State, or local housing program that will be used in conjunction with such grant amounts to ensure compliance with all applicable requirements and regulations of such programs; and make such assurances to the grantee that it will comply with the HTF requirements. These conditions of eligibility imposed on recipients are incorporated in the definition of "recipient" found in § 92.702.

State. The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa. (*See* 1338 (a)(1) of FHEFSSA.)

State-Designated Entity. The statute permits a State to use a "State-designated entity" to receive its formula allocation. Permissible designees for the HTF State-designated entity are: A State housing finance agency, a Tribally designated housing entity (as such term is defined in section 4 of the Native American Housing Assistance and Self-Determination Act of 1997 (25 U.S.C. 4103)), or any other qualified instrumentality of the State. (*See* 1338(c)(2) of FHEFSSA.)

Subgrantee. An HTF grantee may choose to distribute HTF funds through one or more subgrantees. A subgrantee may be a State agency or a unit of general local government. All local governments that are HTF subgrantees must have an approved consolidated plan under 24 CFR part 91.

Allocation Formula

Reallocations

Section 92.714 describes the conditions under which HUD will reallocate HTF funds. Consistent with the statute, funds will be reallocated by formula in the following fiscal year. (*See* section 1338(c)(10) and (d) of FHEFSSA.)

Participation and Submission Requirements; Distribution of Assistance

Section 92.720 requires the State to notify HUD of its intent to participate in the HTF program and to have a consolidated plan that contains its HTF allocation plan required by FHEFSSA. (*See* section 1338(c)(8) of FHEFSSA.)

Allocation Plan

Section 1338(c)(5)(A) of FHEFSSA provides that for a grantee to receive an HTF grant, the grantee must submit an HTF allocation plan, which must: (1) Describe the distribution of the grant; (2) be based on priority housing needs, as determined by the grantee in accordance with the HTF regulations; (3) comply with the statutory requirements regarding activities eligible for HTF funding; and (4) include performance goals that comply with HUD's HTF regulations. HUD has chosen to implement the requirement for an HTF allocation plan by amending its regulations in 24 CFR part 91 to include these requirements in the consolidated plans of grantees and, where applicable, subgrantees. The decision to include the HTF allocation plan in the consolidated plan is consistent with the statutory requirement in section 105(a) of the Cranston-Gonzalez National Affordable Housing Act (12 U.S.C. 12705) that HUD may only provide assistance directly to a jurisdiction if the jurisdiction submits a comprehensive housing affordability strategy (the basic framework of the consolidated plan) to HUD and the strategy is approved by HUD.

Sections 91.220 and 91.320 of the consolidated plan regulation are amended to reflect the HTF allocation plan requirements.

In addition, section 1338(c)(5)(B) of FHEFSSA directs each State, in establishing its HTF allocation plan, to: (1) Notify the public of the establishment of the plan; (2) provide an opportunity for public comments regarding the plan, (3) consider any public comments received on the plan, and (4) make the completed plan available to the public. Section 1338(c)(8)(B) of FHEFSSA requires grantees to comply with the requirements of laws related to public participation, including laws related to consolidated plans. Rather than establish new citizen participation requirements, § 92.720 directs States to include the HTF allocation plan in the consolidated plan and follow the citizen participation requirements found in the consolidated plan regulations in 24 CFR part 91.

Section 1338(c)(5)(C) of FHEFSSA also provides that a State's allocation plan must disclose the requirements that the State will impose on eligible recipients that apply for grants under the State's formula allocation. Section 1338(c)(5)(C) provides that such requirements must include: (1) A description of the eligible activities to be conducted using such assistance; and (2) a certification from the eligible recipient that any housing units assisted will comply with HTF requirements under this section. The statutory requirements are implemented in §§ 91.220 and 91.320.

In the case of HTF-assisted rental housing projects, the plan must provide priority to projects that have Federal, State, or local project-based rental assistance so that rents are affordable to ELI families, and take into consideration the duration of the HTF-assisted units' affordability period. (*See* 1338 (g)(2)(D) of FHEFSSA.) The HTF allocation plan must consider the merits of the application in meeting the priority housing needs of the State. The rule provides flexibility to allow each grantee to include incentives and priorities in its HTF allocation plan that are appropriate to the communities where housing developed with HTF funds will be located. For example, incentives to promote green building, the use of renewable building materials, or sustainable development, as defined by the grantee, may be included in its HTF allocation plan.

HUD specifically requests comments on how it may provide incentives to encourage the use of HTF funds to develop housing affordable to ELI households that is also accessible to transit and employment centers. HUD is also seeking comments on what program structure or features will encourage or assist States in allocating HTF funding in accordance with metropolitan and regional land use and transportation plans. Similarly, HUD is interested in hearing about how it can provide incentives to HTF grantees and recipients to incorporate "green building" and "sustainability" features in the development of HTF-assisted projects, such as the use of renewable building materials or other techniques that reduce the impact of the property or site on the environment and promote a healthier environment for building occupants. In addition, HUD specifically requests comments on how it could include standards or minimum requirements in the HTF regulations for specific "green building" or sustainable development features.

Distribution of Assistance: HTF Grantees, Subgrantees, and Recipients

Section 92.725 describes the way HTF funds will flow to the communities and recipients, as well as the participation and submission requirements for grantees receiving an HTF allocation. For each year that funds are made available for the HTF, a formula grant will be provided to each State. The State or State-designated entity is responsible for distributing HTF funds throughout the State according to its assessment of the priority housing needs, as identified in the State's approved consolidated plan, and in accordance with any priorities that may be established by HUD in allocating grants to the States in accordance with the formula. HUD will issue notices in the future as necessary to communicate policy priorities for the HTF.

FHEFSSA allows a State to choose to be the HTF grantee (to receive and administer its grant) or to choose a qualified State-designated entity to be the HTF grantee. In addition, the HTF grantee may choose to directly fund projects (in accordance with the grantee's HTF allocation plan in its consolidated plan), or a grantee may choose one or more subgrantees (to administer the HTF funds and fund projects). A subgrantee may be a State agency or a unit of general local government that has submitted a consolidated plan under 24 CFR part 91. The subgrantee must include an HTF allocation plan in its consolidated plan (*see* 24 CFR 91.220(l)(4)) and must select projects by eligible recipients in accordance with its HTF allocation plan.

Eligible recipients of HTF funds must meet statutorily prescribed criteria, as promulgated through this rulemaking. An HTF recipient means an organization, agency, or other entity (including a for-profit entity or a nonprofit entity) that receives HTF assistance from a grantee to be an owner or developer of an HTF-assisted project. In order to qualify as an eligible recipient, the entity must demonstrate its ability and financial capacity to manage the eligible activity in compliance with all applicable HTF requirements. In addition, the entity must demonstrate familiarity with the requirements of other Federal, State, or local housing programs that may be used in conjunction with HTF funds to ensure compliance with all applicable requirements and regulations of such programs. An eligible HTF recipient must have demonstrated experience in housing construction or rehabilitation of rental housing or housing for homeownership; if it is to be the owner, it must demonstrate experience in the management and operation of affordable multifamily rental housing.

Income Targeting

Based on tabulations of American Housing Survey data, HUD estimates that during 2007, there were about 9.2 million ELI renter households nationwide, but only about 4.2 million units with rents affordable and available to this income group. As a result, 64.5

percent of ELI renters were severely rent-burdened (paid more than 50 percent of their income for rent) or lived in severely inadequate housing. HUD notes that more than half (51 percent) of the 3.8 million ELI renters who occupied affordable units in 2007 were able to do so only because they reported receiving government rental assistance, such as from the public housing, project-based Section 8 or Section 202/811 program, and the housing choice voucher program.

By contrast, of the 6.7 million renters with incomes between 30 and 50 percent of area median income (VLI renters), only 23.6 percent had severe rent burdens in 2007. Furthermore, there were about 7.8 million units with rents affordable and available to VLI renters, and about one million of these units were assisted.

FHEFSSA requires that not less than 80 percent of the HTF grant shall be used to produce rental housing [1] and, of this amount, section 1338(c)(7)(A) of FHEFSSA requires that not less than 75 percent shall be used for the benefit only of ELI families or families with incomes at or below the poverty line (as such term is defined in section 673 of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 9902), including any revision required by such section), whichever is the greater, applicable to a family of the size involved, and not more than 25 percent be used for the benefit only of VLI families.

Under the rulemaking authority of section 1338(g) of FHEFFSA, which provides that "The Secretary shall issue regulations to carry out this section [section 1338]," the Secretary has the discretion to elaborate upon, clarify, define and, in some instances, add to the statutory program requirements and criteria. With respect to the allocation of funds for ELI families or families with incomes below the poverty line, the Secretary has the discretion to direct grantees, in any given year, to use more than 75 percent of the HTF funds for the benefit only of ELI families or families with incomes at or below the poverty line, whichever is greater. For the first year in which HTF funds are made available, the rule provides that of the amount made available for rental and homeownership housing, grantees are to expend 100 percent of HTF funds to provide rental and homeownership housing for ELI households. The Secretary shall publish subsequent income targeting requirements when HUD's allocation amounts to States are published. Sections 92.736 and 92.737 set forth the income targeting requirements, as required by section 1338(c)(7) of FHEFSSA, for HTF-assisted rental units and homeownership units, respectively.

HUD recognizes that subsidizing the development and operations of rental units targeted to ELI households can be extremely challenging. The resources available to develop rental units targeted to ELI households are scarce, and the financing mechanisms that are often required to develop financially viable and sustainable projects with units targeted to ELI households are complex and dependent on multiple sources of both public and private funding. In implementing the HTF, HUD's goal is to provide resources and a program structure that will help States and local governments, as well as private and nonprofit developers to develop energy-efficient rental housing that is affordable to ELI households. Toward that end, Section 8 project-based vouchers may be made available through appropriations. If Section 8 project-based vouchers are made available, HTF grantees will allocate the vouchers concurrently with HTF funding to specific projects. These Section 8 project-based vouchers will be administered in accordance with the rules applicable to that program. The vouchers will help pay for the operating costs of units constructed with HTF funds. However, an HTF-assisted unit that has a Section 8 project-based voucher attached to it may not also receive HTF operating cost assistance.

HUD is interested in hearing from developers of affordable rental housing for ELI families about the ways to reduce the cost of subsidizing this housing. What specific measures can the Department undertake to help reduce the cost of producing rental units targeted to ELI families? Similarly, what approaches will help to reduce operating costs and reduce the need for ongoing operating subsidies? For example, to what extent do energy-efficiency measures reduce the costs of operations of these units—for both the tenants and project owners? To what extent do tax abatements significantly reduce operating costs? If HTF funds are used to pay for the entire development cost of these rental units, would the absence of debt significantly impact the financial viability of HTF-assisted units?

If grantees choose to undertake homeownership activities for ELI households, HUD expects that grantees will ensure that the underwriting for these units and homebuyer counseling address the precarious financial conditions that ELI households usually experience. Shared equity models and other types of homeownership program designs, such as lease purchase models, may be more appropriate for HTF-assisted homeownership activities. The Department is seeking comments from the public about appropriate and effective approaches for homeownership programs for ELI households. What specific measures can the Department undertake to help reduce the cost of homeownership targeted to ELI families? Similarly, what approaches will help to reduce operating costs for ELI homeowners? For example, to what extent do energy-efficiency measures reduce the costs of operations of these units?

Eligible and Prohibited Activities

Sections 92.730–92.735 reflect the statutory requirements that govern eligible and prohibited activities, eligible project costs, and planning and administrative costs. Allowable and prohibited fees are also addressed in these sections.

Eligible Activities

Section 92.730 describes the HTF-eligible activities. Section 1338(c)(7) of FHEFSSA provides that HTF funds may be used for assistance for the production, preservation, rehabilitation, and operating costs of rental housing. The Department views the HTF as primarily a production program meant to add units to the supply of affordable housing for ELI and VLI households. While the statute allows HTF funds to be used for operating costs, it does not provide a limit. In order to achieve the goal of using HTF funds primarily for the production of new affordable units, the Department proposes to limit the amount of HTF funds that may be used for operating cost assistance to 20 percent of each annual grant. In establishing this limit, the Department assumes that HTF funds will be combined with other sources to produce and preserve affordable units, mostly in mixed-income projects. The Department also considered various analyses with different scenarios, including different operating cost assistance caps and

[1] The establishment of a minimum of 80 percent of HTF funds to be used for rental housing is derived by reading two provisions of the statute. Section 1338(c)(10) provides that of the aggregate amount allocated to a State or State-designated entity under section 1338, not more than 10 percent shall be used for activities under section 1338(c)(7)(B), which are the homeownership activities. Therefore, under section 1338, not more than 10 percent of funds can be used for homeownership, leaving 90 percent available for the production, preservation, and rehabilitation of rental housing. Section 1338(c)(10)(D)(iii) limits the amount that a State or State-designated entity may use for administrative costs for carrying out the HTF program, to a maximum of 10 percent. Therefore, the minimum amount available for activities under section 1338(c)(7)(A) (rental housing production) is 80 percent.

different local development practices. HUD anticipates that project-based vouchers will be made available to subsidize operating costs in HTF-assisted units. However, if vouchers or other forms of project-based assistance are not available for the HTF-assisted unit, it may be necessary to use HTF funds for operating cost assistance. This limit would make sufficient funds available to pay for operating cost assistance if needed, while ensuring that additional affordable units continue to be produced with HTF funds. The 20 percent limit applies to each annual grant. Therefore, grantees will have discretion in how they allocate funds to each project's development and operating costs. Grantees may apply the 20 percent limit to all projects or adjust it accordingly, as long as no more than 20 percent of each annual grant is used for operating cost assistance.

Analyses of the use of HTF funds for both development and operating subsidy show that the use of HTF funds for operating cost assistance could very quickly consume each State's formula allocation and would deter the use of HTF funds for production of additional units, as well as preservation and rehabilitation of units, targeted to ELI households—the primary purpose of the HTF. If Section 8 Project-Based Vouchers are made available to HTF projects for HTF-assisted units, limiting the amount of HTF funds available for operating cost assistance will not hinder implementation of the HTF.

Nonetheless, HUD is seeking comments regarding how imposing this or any restriction on the use of HTF funds for operating cost assistance might enhance or hinder the ability of a grantee to maximize the number of units affordable to ELI families produced, by new construction or acquisition, with HTF funds.

Section 1338(c)(7)(B) provides that the production, preservation, and rehabilitation of housing for homeownership, including forms of down payment assistance, closing cost assistance, and assistance for interest rate buy-downs, are eligible activities. HTF funds may be used only for units that will be the principal residence of eligible families who are first-time homebuyers.

Section 1338(c)(10)(A) of FHEFSSA provides that not more than 10 percent of the annual grant may be used for homeownership activities. If a grantee chooses to implement a homeownership program with HTF funds, the regulations require the grantee to perform due diligence and underwriting analysis such that the affordability of the homeownership units is sustainable for ELI households. In light of the distressed housing market conditions in many jurisdictions, program techniques such as shared equity, lease-purchase, and first options to re-purchase HTF-assisted homeownership units in default might be practical features to include in HTF homeownership programs.

Forms of Assistance

Section 92.730(b) provides that HTF funds may be invested as equity investments, interest-bearing loans or advances, non-interest-bearing loans or advances, interest subsidies, deferred payment loans, grants, or other forms of assistance that HUD may determine to be consistent with the goals and objectives of the HTF.

Section 92.730(c) requires that only the actual cost of development and operation of HTF units can be charged to the program, and describes the methods for allocating costs and determining HTF units in multiunit projects. An HTF-assisted unit that has a Section 8 project-based voucher attached to it may not also receive HTF operating cost assistance.

Terminated Project

Section 92.730(d) provides that an HTF-assisted project that is terminated before completion, either voluntarily or otherwise, constitutes an ineligible activity, and any HTF funds invested in the project must be repaid to the grantee's HTF account.

Prohibited Activities

Prohibited activities are set forth in § 92.735. Section 1338(c)(10)(D) of FHEFSSA provides that HTF funds may not be used for: Political activities; advocacy; lobbying, whether directly or through other parties; counseling services; travel expenses; and preparing or providing advice on tax returns. The prohibited use of funds for political activities includes influencing the selection, nomination, election, or appointment of one or more candidates to any Federal, State, or local office as codified in section 501 of the Internal Revenue Code of 1986 (26 U.S.C. 501). This statutory section further provides that, subject to the exception in section 1338(c)(10)(D)(iii), HTF funds may not be used for administrative, outreach, or other costs of the grantee, or any other recipient of such grant amounts. The statutory exception to this prohibition is that a grantee may use up to 10 percent of the State's HTF grant for administrative costs of carrying out its program(s) using the HTF, including homeownership counseling.

Eligible Project Costs

Section 92.731 sets forth the eligible project costs, which include development hard costs, refinancing costs in conjunction with rehabilitation, acquisition of standard projects, development related soft costs, architectural and engineering fees, project audit costs, staff overhead related to the development of the units, settlement costs, impact fees, the cost to address and meet environmental and historic preservation property standards, operating costs, relocation costs, repayment of construction or other loans, and certain types of costs for construction undertaken before HTF funds were committed to the project.

Operating cost assistance, as defined in § 92.731(e), may include the cost of utilities, insurance, taxes, and scheduled payments to a replacement reserve. The eligible amount of HTF funds per unit for operating costs is determined based on the deficit remaining after the monthly rent payment for the HTF-assisted unit is applied to the HTF-assisted unit's share of monthly operating costs. The written agreement between the grantee and the recipient must set forth the maximum amount of the operating assistance to be provided to the HTF-assisted rental project. The grantee may provide operating cost assistance necessary for the project for up to 2 years from one HTF grant. However, the written agreement may provide for renewal of operating cost assistance during the period of affordability of the project, subject to funding availability.

Administration and Planning Costs

As noted earlier, the administrative costs allowed in the HTF program cannot exceed 10 percent of the annual grant. Similar to the HOME program requirements at § 92.207, eligible administrative and planning costs are found in § 92.732.

HTF and Public Housing

Section 1338(c)(7)(A) of FHEFSSA provides that HTF assistance may be used for the production, preservation, and rehabilitation of housing, including housing identified in section 1335(a)(1)(B) of FHEFSSA (12 U.S.C. 4565(a)(1)(B)). (**Note:** The statute incorrectly references section 1335(a)(2)(B)). The programs identified in that section include housing projects subsidized under the project-based and tenant-based rental assistance programs under section 8 of the United States Housing Act of 1937 (1937 Act); the program under section 236 of the National Housing Act; the below-market

interest rate mortgage program under section 221(d)(4) of the National Housing Act (note: Section 1335(a)(1)(B) of FHEFSSA incorrectly references the below-market interest rate mortgage program; the correct statutory reference is section 221(d)(3)/(d)(5) of the National Housing Act.); the supportive housing for the elderly program under section 202 of the Housing Act of 1959; the supportive housing program for persons with disabilities under section 811 of the Cranston-Gonzalez National Affordable Housing Act; the permanent supportive housing projects subsidized under programs under Title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11361 *et seq.*); the rural rental housing program under section 515 of the Housing Act of 1949; the low-income housing tax credit under section 42 of the Internal Revenue Code of 1986, as amended; and comparable State and local affordable housing programs. Although this list is not necessarily exhaustive, it is HUD's determination that the HTF funds are not eligible to be used in existing public housing units. Moreover, the 1937 Act provides annual formula funding for public housing. Accordingly, § 92.734 prohibits the use of HTF funds for public housing.

Prohibited Activities and Fees

The section on prohibited activities and fees mirrors the HOME program regulation at § 92.214, except that the HTF section is expanded to expressly cover political activities, advocacy, and lobbying, which are ineligible under FHEFSSA.

Program Requirements

Site and Neighborhood Standards

Section 92.726 applies the site and neighborhood standards for the HOME program, at § 92.202, to the HTF. If Section 8 project-based vouchers are made available, the Section 8 requirements related to site and neighborhood standards will apply to an HTF-assisted unit that has a Section 8 project-based voucher attached to it.

Income Determinations

Section 92.727 defines "annual income" and describes the process for determining the annual income of tenants and homebuyers for eligibility in HTF-assisted housing. Income from all family members must be included when determining income eligibility. As in the HOME program, grantees may use the definition of annual income in 24 CFR 5.609 (Section 8 program definitions) or the Internal Revenue Service (IRS) definition of annual income from IRS Form 1040. Section 92.727(e) provides that a State must follow HUD's regulations in 24 CFR 5.617 when making income determinations for persons with disabilities who are tenants in HTF-assisted rental housing. For homebuyers, the grantee must determine annual income by examining source documentation for the entire household, or obtain written statements verifying incomes from the household or administrators of government programs from which the household receives assistance.

Project Requirements

Sections 92.740–92.750 establish requirements applicable to HTF-assisted housing projects.

Maximum Per-Unit Subsidy

Section 92.740(a) establishes maximum per-unit subsidy, underwriting, and subsidy layering requirements. The grantee must establish maximum limitations on the amount of HTF funds the grantee may invest on a per-unit basis.

Underwriting and Subsidy Layering

Section 92.740(b) requires the grantee to perform subsidy layering analysis before committing HTF funds to a project. The grantee must determine that costs are reasonable, examine the sources and uses of funds, and ensure that the amounts available and their use are necessary to provide quality affordable rental or homeownership housing for ELI households for the affordability period (30 years). Furthermore, developers or owners of HTF-assisted projects may not receive undue returns on their investments.

Property Standards

As described below, the HTF requires energy and water efficiency features in all HTF-assisted units. Each grantee can include incentives and priorities in its HTF allocation plan to further promote sustainable development that is appropriate to the communities where housing developed with HTF funds will be located.

Applicable property standards are established at §§ 92.741 through 92.745. This rule requires, at minimum, that all HTF-assisted units that are newly constructed or undergoing gut rehabilitation must be certified that they meet the guidelines for ENERGY STAR-Qualified New Homes (for residential buildings up to 3 stories) or exceed, by 20 percent, the energy efficiency requirements of the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 90.1–2007, Appendix G: Performance Rating Method (for residential buildings over 3 stories), as defined in § 92.741. A Home Energy Rater (HER) must inspect the units to certify that the units meet the ENERGY STAR guidelines. HUD is aware that Home Energy Raters may not be available in all places; therefore, the requirement for ENERGY STAR certification will become effective 6 months from the effective date of this rule. ENERGY STAR-labeled products must be installed when older obsolete products are replaced as part of the rehabilitation work for HTF-assisted units, as applicable in § 92.742. All water-usage products installed in HTF-assisted units must also be certified to meet the WaterSense requirements, in accordance with § 92.741 and § 92.742.

The specific property standards addressed by §§ 92.741 through 92.745 are as follows: § 92.741 contains the property standards for new construction and gut rehabilitation, § 92.742 establishes the standards for housing undergoing other rehabilitation, § 92.743 contains the property standards for existing housing that is acquired with HTF funds, § 92.744 establishes property standards for manufactured housing, and § 92.745 establishes ongoing property standards for rental housing during the period of affordability.

HUD requests comments from interested parties on how additional minimum property standards may be imposed to increase the efficiency and reduce the operating costs of HTF-assisted units.

Qualification as Affordable Housing

Sections 92.746 and 92.748 establish an affordability period of not less than 30 years for rental housing and homeownership units assisted with HTF funds. As stated earlier, the Department expects that HTF funds will be combined with the other sources of private funding and financing typically used for the development of affordable housing, such as Low-Income Housing Tax Credits (LIHTCs). The affordability period for HTF-assisted units is designed to work in conjunction with the 30-year affordability period for LIHTC projects. Grantees may also establish longer affordability periods in their HTF allocation plans.

Section 92.746(b) establishes the maximum rent (including utilities) for HTF-assisted units at 30 percent of the annual income of a family whose income equals 30 percent of the area median income, or 30 percent of the poverty line, whichever is greater. It is necessary to establish fixed rents for underwriting purposes and required subsidy layering analyses. HUD

recognizes that some ELI tenants living in HTF-assisted units may be rent-burdened if required to pay HTF rents. As stated earlier in this preamble, Section 8 Project-Based Vouchers may be made available to HTF-assisted units; these vouchers alleviate cost burdens for ELI tenants. When project-based assistance from other HUD programs is provided to HTF units, the rents are based on the rent requirements of that program.

Section 92.746(e) requires that HTF project owners verify the initial and continued eligibility of tenants living in HTF-assisted rental units and establishes the methods by which HTF project owners must verify tenant income. Furthermore, this section specifies that when Section 8 Project-Based Vouchers or any other Federal rental assistance programs are used in conjunction with an HTF-assisted rental unit, the income verification rules and procedures of those programs will apply instead of the requirements set forth in this subsection.

Section 92.747 establishes tenant protection, lease, and selection requirements, and incorporates the requirements of section 1338(c)(8) of FHEFSSA.

Section 92.748(d) establishes the HTF requirements for homebuyers. HTF assistance to homebuyers may be provided only to first-time homebuyers and must be for the principal residence of the homebuyer. Before purchasing the housing, in accordance with section 1338(c)(7)(B)(iv) of FHEFSSA, the homebuyer must have completed homeownership counseling from an organization that meets the requirements of section 1132 of the Federal Housing Regulatory Reform Act of 2008.

Section 92.748(f) establishes the resale requirements, as required by section 1338(c)(7)(B)(iii), for homeownership units assisted by the HTF. Upon resale, each HTF-assisted homeownership unit must be sold to an income-eligible family. Each grantee that has an HTF homeownership program must include resale restriction policies in its HTF allocation plan. HTF grantees may adopt their HOME program resale restriction policies, modified for income-eligible households. The grantee may also include purchase options and right of first refusal to purchase the HTF-assisted units upon foreclosure, in order to preserve affordability.

Section 92.749 defines the modest housing requirements in section 1338(c)(7)(B)(ii) of FHEFSSA for HTF-assisted homeownership units. For newly constructed housing, the value of the housing may not exceed 95 percent of the median purchase price for single-family housing in the area. HUD intends to provide these purchase limits for each area or the grantee can determine 95 percent of the area median purchase price in accordance with the methodology set forth in § 92.749(e).

In the event of foreclosure of HTF-assisted rental or homeownership units, or transfer of deed in lieu of foreclosure, the affordability period required by §§ 92.746 and 92.748 is terminated. In order to preserve the affordability of the housing, the grantee may include purchase options in the HTF written agreement, such as "right of first refusal" to purchase the HTF-assisted units in default. The termination of the affordability restrictions on the project does not terminate the grantee's repayment obligation under § 92.773.

Faith-Based Organizations

Section 92.750 provides for the eligibility of faith-based organizations to apply for and use HTF funds under the same requirements as other recipients.

Other Federal Requirements

Sections 92.760–92.764 set forth the other Federal requirements that are applicable to the use of HTF funds, including nondiscrimination requirements. For example, the rule requires the grantee to establish affirmative marketing requirements, as required in the HOME program, and grantees must comply with Federal lead-based paint and relocation requirements. These sections also include the funding accountability and transparency requirements of the Federal Funding Accountability and Transparency Act of 2006 (31 U.S.C. 6101 note), which must be met in accordance with section 1338(i) of FHEFSSA.

Program Administration

Sections 92.770–92.779 establish the conditions and requirements by which States are to administer their HTF funds. Section 92.770 describes two HTF accounts that make up the HTF: The HTF Treasury account, which is for HTF funds allocated or reallocated to a grantee under the HTF formula, and the HTF local account, which is for deposits of HTF funds disbursed from the HTF Treasury account, any program income, and any repayments required to be made. Section 92.771 provides that allocation and reallocation of HTF funds will be made available pursuant to an HTF grant agreement.

Section 92.772 establishes the requirements applicable to program disbursement and the establishment of the information system consistent with section 1338(e) of FHEFSSA. This statutory section provides that (1) HUD must require each grantee to develop and maintain a system to ensure that each recipient of assistance use HTF funds in accordance with the statute, the regulations, and any requirements or conditions under which HTF funds were provided; and (2) establish minimum requirements for agreements between the grantee and recipients. This statutory section further provides that the minimum requirements must include: (1) Appropriate periodic financial and project reporting, record retention, and audit requirements for the duration of the assistance to the recipient, to ensure compliance with the limitations and requirements of the statute and regulations; and (2) any other requirements that the Secretary determines are necessary to ensure appropriate administration and compliance. These statutory requirements are reflected in §§ 92.776–92.779.

Specifically, § 92.774(b) requires that before disbursing any HTF funds to any entity, the grantee must enter into a written agreement with that entity. The written agreement must ensure compliance with the requirements of this subpart. Requirements for the HTF written agreement and required provisions are specified in § 92.774(c). Where HOME program funds are used together with HTF funds, a single written agreement meeting the requirements of both § 92.504 and this subpart may be used to enforce requirements for both programs.

Section 1338(g)(2) of FHEFSSA requires that HUD ensure that the use of HTF grants by States or State-designated entities is audited not less than annually to ensure compliance with statutory and HUD's regulatory requirements. Section 1338(g)(2) also authorizes HUD to audit, provide for an audit, or otherwise verify a grantee's activities to ensure compliance with all HTF requirements. Section 1338(g)(2) further provides that any financial statement submitted by a grantee or recipient to HUD shall be reviewed by an independent certified public accountant in accordance with Statements on Standards for Accounting and Review Services, issued by the American Institute of Certified Public Accountants. These requirements are reflected in § 92.776.

Performance Review and Sanctions

Review of Subgrantees and Recipients

Grantees will report on their progress and performance in meeting the requirements of the HTF in HUD's Integrated Disbursement & Information

System (IDIS) and the consolidated plan. For example, grantees will report on the incomes of HTF beneficiaries in IDIS, and will also demonstrate compliance with the deadlines for the commitment and expenditure of funds by data entered into IDIS. As stated earlier, this proposed rule would add the annual HTF allocation plan as a subsection to the strategic plan and annual action plan. Performance benchmarks will be established in the HTF allocation plan in conjunction with the strategic and annual plans, and subsequent reporting on performance will be reported to the public and HUD through the submissions and reports associated with those plans.

Section 1338(e)(2)(B) of FHEFSSA is directed to the misuse of funds and provides that if HUD determines, after reasonable notice and opportunity for hearing, that a grantee has failed to comply substantially with any provision of the HTF statutory requirements or HUD's regulatory requirements, and until HUD is satisfied that there is no longer any such failure to comply, HUD shall: (1) Reduce the amount of assistance to the grantee by an amount equal to the amount of grant amounts that were not used; (2) require the grantee to repay HUD any amount of the grant that was not used; (3) limit the availability of assistance to the grantee to activities or recipients not affected by such failure to comply; or (4) terminate any assistance under this section to the grantee. These statutory requirements are reflected in § 92.782.

Section 1338(e)(1)(B) provides that if any recipient of assistance of HTF funds is determined to have used any such amounts in a manner that is materially in violation of the HTF statutory requirements, HUD's HTF regulatory requirements, or any requirements or conditions under which such amounts were provided, the grantee shall require, within 12 months after the determination of the misuse, that the recipient must reimburse the grantee for the misused amounts and return to the grantee any such amounts that remain unused or uncommitted for use. Section 1338(e)(1)(B) provides that if a grantee makes this determination, the grantee must first provide notification of the determination to HUD for review and concurrence. This statutory section authorizes HUD to reverse the determination if it disagrees. These statutory requirements are reflected in § 92.783.

Consolidated Plan Revisions

As noted earlier in this preamble, this rule also makes conforming changes to the consolidated plan regulations at 24 Part 91 to require information related to the HTF to be included in strategic and 5-year State or local government strategic and annual action plans.

III. Findings and Certifications

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled, "Regulatory Planning and Review"). This proposed rule was determined to be a "significant regulatory action," as defined in section 3(f) of the Order but not economically significant, as provided in section 3(f)(1) of the Order. The reasons for the determination are as follows:

As discussed above in this preamble, HERA charged HUD to establish through regulation, the formula for the distribution of HTF grants to States, and to follow that rule with one that implements the programmatic requirements for the HTF. Consistent with that statutory direction, on December 4, 2009 (74 FR 63938), HUD published a proposed rule submitting for public comment the proposed formula for allocating HTF funds. As the first rule to be issued in the rulemaking process for the HTF, the formula allocation constituted, on behalf of the entire HTF rulemaking, an economically significant regulatory action under Executive Order 12866. The preamble to the December 2009 rule summarized the economic impacts of the HTF program, as proposed to be implemented through the formula issued for public comment on December 4, 2009. (For a discussion of the economic impact, please *see* 74 FR 63940–63941.) HUD's full economic analysis for the allocation rule is available for inspection on HUD's Web site at *http://www.huduser.org/portal/publications/pubasst/riaforhtf.html.*

This proposed rule follows the December 4, 2009, allocation formula rule by submitting for public comment the program requirements that will govern the HTF. The economic impacts of the rulemakings implementing the HTF are largely limited to the procedures governing the allocation and distribution of grant funds set forth in the December 4, 2009, proposed rule. This proposed rule does not revise the HTF allocation formula or otherwise affect the allocation of HTF funds. To the extent that this proposed rule has an economic impact, it derives from the December 2009 allocation formula proposed rule. That economic assessment may be revised to account for any new impacts resulting from changes made at the final rule stage.

The docket file is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Persons with hearing or speech impairments may access the above telephone number via TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Under the HTF program, HUD makes grants to the relatively large entities of States or their designated housing entities for the purposes of preserving and increasing the supply of rental housing and increasing homeownership for eligible families. Therefore, the primary focus on the rule is on these large entities. The States and State-designated housing entities may, in turn, make funding available to recipients, which may include smaller entities (such as nonprofit or for-profit organizations), but the funding made available to recipients is provided under application procedures and requirements established by the States or State-designated housing entities, not HUD; however, the grantees must ensure their recipients' adherence to the statutory requirements and regulatory requirements promulgated by HUD.

Additionally, the regulatory text largely reflects statutory requirements of FHEFFSA. Where HUD has exercised the discretion to elaborate on the statutory requirements, HUD has strived to closely model these procedures on existing development programs, which are familiar to entities likely to be participants under the new HTF program. For example, as noted earlier in this preamble, the HTF program adopts several definitions used under the HOME program. The organization of the HTF regulations is modeled after those for the HOME program, and HUD has elected to adopt many existing HOME program requirements. Given that HTF funding is statutorily provided for the benefit of the States and is to be

allocated to the States, HUD has determined that the rule will not have a significant economic impact on a substantial number of small entities.

Notwithstanding HUD's determination that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at 800–877–8339.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of Section 6 of the Executive Order are met. This rule does not have federalism implications, and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. This rule does not impose any Federal mandate on any State, local, or Tribal government or the private sector within the meaning of UMRA.

Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

The burden of the information collections in this rule is estimated as follows:

REPORTING AND RECORDKEEPING BURDEN

Reg. section	Paperwork requirement	Recordkeeping hours	Reporting hours	Number of jurisdictions	Total hours
§ 91.215	Strategic Planning—Draft Housing Section of Localities Plan.	10		62	620
§ 91.220	Allocation Planning—Draft the localities allocation plan.	30		62	1,860
§ 92.725	Distribution of Assistance	2		56	112
§ 92.726	Site and Neighborhood Standards	2		56	112
§ 92.727	Income Determinations	1		4,573	4,573
§ 92.730, § 92.731, § 92.736, § 92.737, § 92.740, § 92.746, and § 92.748.	Documentation required by HUD to be included in project file to determine project eligibility (*i.e.,* eligible activities and costs, income targeting, subsidy limits, qualification as affordable housing).	5		415	2,075
§ 92.741, § 92.742, § 92.743, § 92.744, and § 92.745.	Property Standards (new construction, rehabilitation, acquisition, manufactured housing, rental housing).	1		415	415
§ 92.747	Tenant Protections and Selection (including lease requirement).	1		4,573	4,573
§ 92.748	Qualification as Affordable Housing: Homeownership.	1		58	58
§ 92.720	Public Participation	4		56	224
§ 92.760	Other Federal Requirements and Nondiscrimination (including minority and women business enterprise and minority outreach efforts).	5		415	2,075
§ 92.760	Affirmative Marketing	10		415	4,150
§ 92.762	Displacement, Relocation, and Acquisition (including tenant assistance policy).	5		457	2,285
§ 92.761	Lead-based paint	1		208	208
§ 92.778	Debarment and Suspension	1		25	25
§ 92.771	HTF Grant Agreement (HUD 40101)	1		56	56
§ 92.774	Grantee Written Agreements	10		415	4,150
§ 92.725	Distribution of Assistance—State Designation of Local Recipients.		2	52	78
§ 92.731	Eligible Project Costs—Refinancing		1	25	25
§ 92.772	Program Disbursement and Information System (IDIS).		1	415	415

REPORTING AND RECORDKEEPING BURDEN—Continued

Reg. section	Paperwork requirement	Recordkeeping hours	Reporting hours	Number of jurisdictions	Total hours
Total Annual Respondents and Burden Hours		90	4	12,809	28,089

Total Estimated Burden Hours

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(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 collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Comments must refer to the proposal by name and docket number (FR–5246) and must be sent to:

HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax: 202–395–6947, and

Reports Liaison Officer, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7233, Washington, DC 20410.

List of Subjects

24 CFR Part 91

Aged, Grant programs-housing and community development, Homeless, Individuals with disabilities, Low- and moderate-income housing, Reporting and recordkeeping requirements.

24 CFR Part 92

Administrative practice and procedure, Grant programs-housing and community development, Low- and moderate-income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, HUD proposes to amend 24 CFR part 91 and amend 24 CFR part 92 as follows:

PART 91—CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS

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

Authority: 42 U.S.C. 3535(d), 3601–3619, 5301–5315, 11331–11388, 12701–12711, 12741–12756, 12901–12912, and 12 U.S.C. 1301 *et seq.*

2. In § 91.2, remove the word "and" at the end of paragraph (a)(3), remove the period at the end of paragraph (a)(4) and add "; and" in its place, and add paragraph (a)(5) to read as follows:

§ 91.2 Applicability.

(a) * * *

(5) The Housing Trust Fund (HTF) program (*see* 24 CFR part 92).

* * * * *

3. Revise the first sentence of § 91.10(a) to read as follows:

§ 91.10 Consolidated program year.

(a) Each of the following programs shall be administered by a jurisdiction on a single consolidated program year, established by the jurisdiction: CDBG, ESG, HOME, HOPWA, and HTF. * * * * * * * *

4. Revise § 91.215(b)(2) to read as follows:

§ 91.215 Strategic plan.

* * * * *

(b) * * *

(2) The affordable housing section shall include specific objectives that describe proposed accomplishments the jurisdiction hopes to achieve and must specify the number of extremely low-income, low-income, and moderate-income families to whom the jurisdiction will provide affordable housing as defined in 24 CFR 92.252 for rental housing, 24 CFR 92.254 for homeownership, and 24 CFR 92.746 and 24 CFR 92.748 (if the jurisdiction receives HTF funds from the State) over a specific time period.

* * * * *

5. Add § 91.220(l)(4) to read as follows:

§ 91.220 Action plan.

* * * * *

(l) * * *

(4) Housing Trust Fund. If the jurisdiction receives HTF funds from the State, under 92.725, the action plan must include the HTF allocation plan (consistent with the State's HTF requirements) that describes the distribution of the HTF funds, and establishes the application requirements and the criteria for selection of applications submitted by eligible recipients that meet the jurisdiction's priority housing needs. The plan must include the following:

(i) The plan must identify priority factors for funding that shall include the following: geographic diversity (as defined by the grantee in the consolidated plan); the applicant's ability to obligate HTF funds and undertake eligible activities in a timely manner; in the case of rental housing projects, the extent to which rents for units in the project are affordable to ELI families; in the case of rental housing projects, the duration of the units' affordability period; the merits of the application in meeting the priority housing needs of the jurisdiction (such as housing that is accessible to transit or employment centers, housing that includes green building and sustainable development features, and housing that serves special needs populations); and the extent to which the application makes use of non-Federal funding sources.

(ii) The plan must include the requirement that the application contain a description of the eligible activities to be conducted with the HTF funds (as provided in 24 CFR 92.730) and contain a certification by each eligible recipient that housing units assisted with the HTF will comply with HTF requirements. The plan must also describe eligibility requirements for recipients (as defined in 24 CFR 92.702).

(iii) The plan must provide for performance goals, consistent with the jurisdiction's goals established under 24 CFR 91.215(b)(2).

(iv) The plan must provide the jurisdiction's rehabilitation standards, as required by 24 CFR 92.742.

(v) The plan must describe the conditions under which the grantee will refinance existing debt.

6. Revise § 91.315(b)(2) to read as follows:

§ 91.315 Strategic plan.

* * * * *

(b) * * *

(2) The affordable housing section shall include specific objectives that describe proposed accomplishments the State hopes to achieve and must specify the number of extremely low-income, low-income, and moderate-income families to which the State will provide affordable housing, as defined in 24 CFR 92.252 for rental housing, 24 CFR 92.254 for homeownership, 24 CFR 92.746 for rental housing, and 24 CFR 92.748 for homeownership (if the jurisdiction receives HTF from the State) over a specific time period.

* * * * *

7. Add § 91.320(k)(5) to read as follows:

§ 91.320 Action plan.

* * * * *

(k) * * *

(5) *Housing Trust Fund.* The action plan must include the HTF allocation plan that describes the distribution of the HTF funds, and establishes the application requirements and the criteria for selection of applications submitted by eligible recipients that meet the State's priority housing needs. The plan must also establish the State's maximum per-unit subsidy limit for housing assisted with HTF funds. If the HTF funds will be used for first-time homebuyers, the plan must include resale restrictions in accordance with 24 CFR 92.748. The plan must reflect the State's decision to distribute HTF funds through grants to subgrantees and/or to select applications submitted by eligible recipients. If the State is selecting applications submitted by eligible recipients, the plan must include the following:

(i) The plan must provide priority for funding based on geographic diversity (as defined by the grantee in the consolidated plan); the applicant's ability to obligate HTF funds and undertake eligible activities in a timely manner; in the case of rental housing projects, the extent to which the project has Federal, State, or local project-based rental assistance so that rents are affordable to ELI families; in the case of rental housing projects, the duration of the units' affordability period; the merits of the application in meeting the priority housing needs of the State (such as housing that is accessible to transit or employment centers, housing that includes green building and sustainable development features, or housing that serves special needs populations); and the extent to which the application makes use of non-Federal funding sources.

(ii) The plan must include the requirement that the application contain a description of the eligible activities to be conducted with the HTF funds (as provided in 24 CFR 92.730) and contain a certification by each eligible recipient that housing units assisted with the HTF will comply with HTF requirements. The plan must also describe eligibility requirements for recipients (as defined in 24 CFR 92.702).

(iii) The plan must provide for performance goals and benchmarks against which the State will measure its progress, consistent with the State's goals established under 24 CFR 91.315(b)(2).

(iv) The plan must include the State's rehabilitation standards, as required by 24 CFR 92.742.

(v) The plan must include the refinancing guidelines as required by 24 CFR 92.731(b).

(vi) The plan must describe the conditions under which the grantee will refinance existing debt.

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

8. The authority for 24 CFR part 92 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 12701–12839, and 12 U.S.C. 1301 *et seq.*

9. In § 92.2, revise the definition of "First-time homebuyer" to read as follows:

§ 92.2 Definitions.

* * * * *

First-time homebuyer means an individual and his or her spouse who have not owned a home during the 3-year period prior to purchase of a home with assistance under this part. The term first-time homebuyer also includes an individual who is a displaced homemaker or single parent, as those terms are defined in this section.

* * * * *

10. Add new subpart N to read as follows:

Subpart N—Housing Trust Fund

General

Sec.
92.701 Overview.
92.702 Definitions.
92.703 Waivers.

Allocation Formula; Reallocations

92.710–92.713 [Reserved]
92.714 Reallocations by formula.

Participation and Submission Requirements; Distribution of Assistance

92.720 Participation and submission requirements.
92.725 Distribution of assistance.

Program Requirements

92.726 Site and neighborhood standards.
92.727 Income determinations.

Eligible and Prohibited Activities

92.730 Eligible activities: general.
92.731 Eligible project costs.
92.732 Eligible administrative and planning costs.
92.734 HTF funds and public housing.
92.735 Prohibited activities and fees.

Income Targeting

92.736 Income targeting: rental units.
92.737 Income targeting: homeownership.

Project Requirements

92.740 Maximum per-unit subsidy amount, underwriting, and subsidy layering.
92.741 Property standards: new construction projects and gut rehabilitation projects.
92.742 Property standards: rehabilitation projects.
92.743 Property standards: acquisition of standard housing.
92.744 Property standards: manufactured housing.
92.745 Ongoing property standards: rental housing.
92.746 Qualification as affordable housing: rental housing.
92.747 Tenant protections and selection.
92.748 Qualification as affordable housing: homeownership.
92.749 Qualification as affordable housing: modest housing requirements for homeownership.
92.750 Faith-based organizations.

Other Federal Requirements

92.760 Other Federal requirements and nondiscrimination; affirmative marketing.
92.761 Lead-based paint.
92.762 Displacement, relocation, and acquisition.
92.763 Conflict of interest.
92.764 Funding accountability and transparency.

Program Administration

92.770 Housing Trust Fund (HTF) accounts.
92.771 HTF Grant Agreement.
92.772 Program disbursement and information system.
92.773 Program income and repayments.
92.774 Grantee responsibilities; written agreements; onsite inspections; financial oversight.
92.775 Applicability of uniform administrative requirements.
92.776 Audit.
92.777 Closeout.
92.778 Recordkeeping.
92.779 Performance reports.

Performance Review and Sanctions

92.780 Accountability of recipients.
92.781 Performance reviews.
92.782 Corrective and remedial actions.
92.783 Notice and opportunity for hearing; sanctions.

Subpart N—Housing Trust Fund

General

§ 92.701 Overview.

(a) This subpart implements the Housing Trust Fund (HTF) program established under section 1338 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (FHEFSSA), as amended by the Federal Housing Finance Regulatory Reform Act of 2008 (12 U.S.C. 4568). In general, under the HTF program, HUD allocates funds by formula to eligible States to increase and preserve the supply of decent, safe, sanitary, and affordable housing, with primary attention to rental housing for ELI and VLI households, including homeless families.

(b) Section 1337 of FHEFSSA requires a percentage of the unpaid principal balance of total new business for the Federal Home Loan Mortgage Corporation (Freddie Mac) and the Federal National Mortgage Association (Fannie Mae) (collectively, the government-sponsored enterprises or GSEs) to be set-aside and allocated as a dedicated source of annual funding for the HTF, unless allocations are suspended by the Director of the Federal Housing Finance Agency, the agency that regulates the GSEs. These funds will be deposited into an HTF account established in the Treasury of the United States by the Secretary of the Treasury to carry out the HTF program. FHEFSSA also provides that the HTF may be funded with amounts appropriated, transferred, or credited to the HTF under other provisions of law.

(c) Other subparts of part 92 are not applicable to the HTF program, except as expressly provided in this subpart N. To the extent that sections of other subparts of this part are made applicable, references to HOME shall mean HTF and references to participating jurisdictions shall mean grantees.

§ 92.702 Definitions.

(a) The definitions in 24 CFR 92.2 apply to this subpart, except as modified in paragraph (b) of this section.

(b) As used in this subpart:

Commitment means:

(1) The grantee has executed a legally binding written agreement (that includes the date of the signature of each person signing the agreement) with an eligible recipient for a project that meets the definition of "commit to a specific local project" of paragraph (2) of this definition or with a unit of general local government for a project that meets the definition of "commit to a transit-oriented development" of paragraph (3) of this definition.

(2) Commit to a specific project, which means:

(i) If the project consists of rehabilitation or new construction (with or without acquisition), the grantee and recipient have executed a written legally binding agreement under which HTF assistance will be provided to the recipient for an identifiable project for which construction can reasonably be expected to start within 12 months of the agreement date.

(ii) If the project consists of acquisition of standard housing and the grantee is providing HTF funds to a recipient to acquire rental housing, or to a first-time homebuyer family to acquire single-family housing for homeownership, the grantee and recipient or the family have executed a written agreement under which HTF assistance will be provided for the purchase of the single-family housing or rental housing and the property title will be transferred to the family or recipient within 6 months of the agreement date.

(iii) If the project includes operating cost assistance, the grantee and the recipient must have executed a legally binding written agreement under which HTF assistance will be provided to the recipient for operating cost assistance for the identified HTF project. The legally binding agreement must include the amount of HTF funds necessary for operating cost assistance for a period of not more than 2 years, which may be renewed during the period of affordability.

(3) Commit to a transit-oriented development means a unit of general local government and the property owner have executed a legally binding written contract for sale of an identifiable property for use for HTF-assisted units within a transit-oriented development and that the property title will be transferred to the unit of general local government within 6 months of the date of the contract. Within 36 months of the date of the transfer of title, the local government must commit an additional amount of HTF funds or other resources, as necessary, to a specific local project (that meets the definition in paragraph (2) of this definition) for this property.

Energy-Efficient Improvements mean activities undertaken to minimize energy waste in existing housing through rehabilitation work, including home weatherization and other improvements such as installing additional insulation, sealing or reducing air leakage, upgrading to energy-efficient lighting, installing programmable thermostats, and converting to high-efficiency HVAC equipment and appliances. Energy-efficient improvements can increase comfort levels, and improve health in homes, reduce operating costs, improve building performance, lower maintenance costs, and reduce energy-related pollution of the environment.

ENERGY STAR is a joint program of the Environmental Protection Agency (EPA) and the Department of Energy to save money and protect the environment through endorsement of energy-efficient products and practices.

ENERGY STAR-Qualified New Homes means homes that earn the ENERGY STAR label. To earn the ENERGY STAR label, a home must meet strict guidelines for energy efficiency set by the U.S. Environmental Protection Agency (EPA) and be independently verified by a third-party Home Energy Rater. Any home three stories or less can earn the ENERGY STAR label if it has been verified to meet EPA's guidelines, including: single-family, attached, and low-rise multifamily homes; manufactured homes; systems-built homes *(e.g.,* SIP, ICF, or modular construction); log homes; concrete homes; and existing retrofitted homes. ENERGY STAR qualified homes can include a variety of energy-efficient features that contribute to improved home quality and homeowner comfort, lower energy demand, and reduced air pollution, including effective insulation, high-performance windows, tight construction and ducts, efficient heating and cooling equipment, and efficient ENERGY STAR qualified products.

ENERGY STAR-Qualified Products and Appliances means that the energy-efficient products and appliances have earned the ENERGY STAR label by meeting guidelines for energy efficiency set by the EPA, and will help deliver energy savings and environmental benefits. Products that can earn the ENERGY STAR label include lighting, windows, heating and cooling equipment, and appliances such as refrigerators, dishwashers, and washing machines.

Extremely Low-Income (ELI) Families means low-income families whose annual incomes do not exceed 30 percent of the median family income of a geographic area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 30 percent of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents,

or unusually high or low family incomes.

FHEFSSA means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (12 U.S.C. 1301 *et seq.*).

Grantee means the State or the State-designated entity that receives the HTF funds from HUD.

Gut Rehabilitation means the total removal and replacement of all interior (nonstructural) systems, equipment, components, or features of the existing structure, and may include structural and nonstructural modifications of the exterior of the structure.

Home Energy Rater (HER) means an independent third-party rater who verifies that a home meets ENERGY STAR guidelines. Home Energy Raters are trained and certified through the Residential Energy Services Network (RESNET) to evaluate construction techniques, recommend improvements, take key measurements, and perform inspections and testing procedures during and after construction to verify a home's energy-efficient performance and conduct Home Energy Rating System (HERS) ratings.

Home Energy Rating means an analysis of a home's projected energy efficiency in comparison to a "reference home" based on the International Energy Conservation Code. A home energy rating involves both an analysis of a home's construction plans, as well as onsite inspections and testing by a certified Home Energy Rater.

HTF Allocation Plan means the annual submission to HUD required by FHEFSSA that describes how the grantee will distribute its HTF funds, including how it will use the funds to address its priority housing needs, what activities may be undertaken with those funds, and how recipients and projects will be selected to receive those funds. *See* 24 CFR 91.220(l)(4) and 91.320(k)(5).

HTF Funds means funds made available under this part through formula allocations and reallocations, plus program income.

Income-eligible means a family, homeowner, or household (as appropriate given the context of the specific regulatory provision) that is very low-income, extremely low-income, or both, depending on the income-targeting requirements established by the Secretary for the fiscal year.

Observed Deficiency (OD) means any deficiency identified during an onsite inspection of each inspected item for each inspected area. The grantee can establish its own standards for an observed deficiency for each inspected item, except that at a minimum, the grantee's standards shall identify each deficiency (regardless of the level of severity) for each inspected item and inspected area included in the latest Uniform Physical Condition Standards (UPCS) Dictionary of Definitions established by HUD pursuant to 24 CFR 5.703 and 24 CFR 5.705, or such other requirements that the Secretary of HUD may establish.

Poverty Line is defined in section 673 of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 9902).

Program Income means gross income received by the grantee that is directly generated from the use of HTF funds. When program income is generated by housing that is only partially assisted with HTF funds, the income shall be prorated to reflect the percentage of HTF funds used. Program income includes, but is not limited to, the following:

(1) Proceeds from the disposition by sale or long-term lease of real property acquired, rehabilitated, or constructed with HTF funds;

(2) Gross income from the use or rental of real property owned by the grantee that was acquired, rehabilitated, or constructed with HTF funds, minus costs that were incidental to generation of the income; therefore, program income excludes gross income from the use, rental, or sale of real property received by the recipient, unless the funds are paid by the recipient to the grantee);

(3) Payments of principal and interest on loans made using HTF funds;

(4) Proceeds from the sale of loans made with HTF funds;

(5) Proceeds from the sale of obligations secured by loans made with HTF funds;

(6) Interest earned on program income pending its disposition; and

(7) Any other interest or return on the investment of HTF funds, as permitted under § 92.730(b).

Project Completion means that all necessary title transfer requirements and construction work have been performed, the project complies with the requirements of this subpart (including the property standards under §§ 92.741 through 92.745 of this subpart), the final drawdown has been disbursed for the project, and the project completion information has been entered in the disbursement and information system established by HUD.

Recipient means an organization, agency, or other entity (including a for-profit entity or a nonprofit entity) that receives HTF assistance from a grantee as an owner or developer to carry out an HTF-assisted project. A recipient must:

(1) Make acceptable assurances to the grantee that it will comply with the requirements of the HTF program during the entire period that begins upon selection of the recipient to receive HTF funds, and ending upon the conclusion of all HTF-funded activities;

(2) Demonstrate the ability and financial capacity to undertake, comply, and manage the eligible activity;

(3) Demonstrate its familiarity with the requirements of other Federal, State, or local housing programs that may be used in conjunction with HTF funds to ensure compliance with all applicable requirements and regulations of such programs; and

(4) Have demonstrated experience and capacity to conduct an eligible HTF activity as evidenced by its ability to:

(i) Own, construct, or rehabilitate, and manage and operate an affordable multifamily rental housing development; or

(ii) Design, construct, or rehabilitate, and market affordable housing for homeownership.

(iii) Provide forms of assistance, such as down payments, closing costs, or interest rate buydowns for purchasers.

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa.

State-Designated Entity means a State housing finance agency, Tribally designated housing entity, or any other qualified instrumentality of the State that is designated by the State to be the grantee.

Subgrantee means a unit of general local government or State public agency selected by the grantee to administer all or a portion of its HTF program. A local government subgrantee must have an approved consolidated plan submitted in accordance with 24 CFR part 91. The selection of a subgrantee by a grantee is not subject to the procurement procedures and requirements.

Transit-Oriented Development (TOD) refers to a compact, mixed-use, mixed-income development that is within walking distance (no more than ½ mile) of a proposed or existing transit facility, that is easily accessible to essential neighborhood destinations including jobs, education, retail, and health services.

Tribally Designated Housing Entity has the meaning given the term in section 4 of the Native American Housing Assistance and Self-Determination Act of 1997 (25 U.S.C. 4103).

Uniform Physical Condition Standards (UPCS) means uniform

national standards established by HUD pursuant to 24 CFR part 5.703 that ensure that assisted housing is decent, safe, sanitary, and in good repair. Standards are established for inspected items for each of the following areas, which must be inspected: site, building exterior, building systems, dwelling units, and common areas.

Very Low-Income (VLI) Families means low-income families whose annual incomes are in excess of 30 percent but not greater than 50 percent of the median family income of a geographic area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 50 percent of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes. "Very low-income family" includes any family that resides in a rural area that does not exceed the poverty line applicable to the family size involved.

WaterSense is a partnership program sponsored by the EPA that seeks to protect the future of our Nation's water supply by promoting water efficiency and enhancing the market for water-efficient products, programs, and practices. WaterSense-labeled products must be independently tested and certified by an EPA-licensed certifying body to meet the criteria in EPA's specifications for water efficiency and performance.

§ 92.703 Waivers.

The Secretary may, upon a determination of good cause and subject to statutory limitations, waive any provision of this subpart and delegate this authority in accordance with section 106 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3535(q)).

Allocation Formula; Reallocations

§§ 92.710–92.713 [Reserved]

§ 92.714 Reallocations by formula.

(a) HUD will reallocate under this section:

(1) Any HTF funds available for reallocation because HUD reduced or recaptured funds from an HTF grantee under § 92.770 for failure to commit or expend the funds within the time specified, or under § 92.783 for failure to comply substantially with any provision of this subpart;

(2) Any HTF funds reduced for failure by the grantee to obtain funds required to be reimbursed or returned under § 92.780; and

(3) Any HTF funds remitted to HUD under § 92.773(b)(4) when a grantee ceases to be an HTF grantee for any reason.

(b) Any reallocation of funds must be made only among all participating States, except those States from which the funds were recaptured or reduced.

(c) Any amounts that become available for reallocation shall be added to amounts for formula allocation in the succeeding fiscal year.

Participation and Submission Requirements; Distribution of Assistance

§ 92.720 Participation and submission requirements.

(a) *Notification of intent to participate.* Not later than 30 days after receiving notice of its formula allocation amount, a State must notify HUD in writing of its intention to become an HTF grantee for the first year of HTF funding.

(b) *Submission requirement.* In order to receive its HTF grant, the grantee must submit a consolidated plan in accordance with 24 CFR part 91.

§ 92.725 Distribution of assistance.

(a) A State may choose to be the HTF grantee to receive and administer its grant or it may choose a qualified State-designated entity to be the HTF grantee.

(b) Each grantee is responsible for distributing HTF funds throughout the State according to the State's assessment of the priority housing needs within the State, as identified in the State's approved consolidated plan, and as may be directed by HUD at the time of allocation of HTF funds for the fiscal year.

(c) An HTF grantee may choose to directly fund projects by eligible recipients in accordance with the grantee's HTF allocation plan or to fund projects by eligible recipients through one or more subgrantees. The HTF subgrantee must have a consolidated plan under 24 CFR part 91, must include an HTF allocation plan in its consolidated plan (*see* 24 CFR 91.220(l)(4)), and must select projects by eligible recipients in accordance with its HTF plan. The grantee or subgrantee must determine that the applicant is an eligible recipient that meets the definition of "recipient" in § 92.702 before awarding HTF assistance.

(d) If the HTF grantee subgrants HTF funds to subgrantees, the grantee must ensure that its subgrantees comply with the requirements of this subpart and carry out the responsibilities of the grantee. The grantee must annually review the performance of subgrantees in accordance with 24 CFR 92.774(a).

Program Requirements

§ 92.726 Site and neighborhood standards.

The site and neighborhood standards contained in § 92.202 apply to the HTF.

§ 92.727 Income determinations.

(a) *General.* The HTF program has income-targeting requirements for HTF-assisted projects. Therefore, the grantee must determine that each family occupying an HTF-assisted unit is income-eligible, by determining the family's annual income.

(b) *Definition of "annual income."* (1) When determining whether a family is income-eligible, the grantee must use one of the following two definitions of "annual income":

(i) "*Annual income*" as defined at 24 CFR 5.609; or

(ii) "*Adjusted gross income*" as defined for purposes of reporting under the Internal Revenue Service (IRS) Form 1040 series for individual Federal annual income tax purposes, except that government cost-of-living allowances that are not included in income (*e.g.,* for a Federal civilian employee or a Federal court employee who is stationed in Alaska, Hawaii, or outside the United States) must be added to adjusted gross income.

(2) To calculate *adjusted* income, the grantee must apply exclusions from income established at 24 CFR 5.611.

(3) The grantee may use only one definition for each HTF-assisted program (*e.g.,* down payment assistance program) that it administers.

(c) *Determining annual income.* (1) *Tenants in HTF-assisted housing.* For families who are tenants in HTF-assisted housing, the grantee must initially determine annual income using the method in paragraph (d)(1) of this section. For subsequent income determinations during the period of affordability, the grantee may use any one of the methods described in paragraph (d) of this section, in accordance with § 92.746(e).

(2) *HTF-assisted homebuyers.* For families who are HTF-assisted homebuyers, the grantee must determine annual income using the method described in paragraph (d)(1) of this section.

(d) *Methods for determining annual income.* A grantee must use one of the following methods to determine annual income, as described in paragraph (c) of this section:

(1) Examine the source documents evidencing annual income (*e.g.,* wage statement, interest statement, unemployment compensation statement) for the family.

(2) Obtain from the family a written statement of the amount of the family's

annual income and family size, along with a certification that the information is complete and accurate. The certification must state that the family will provide source documents upon request.

(3) Obtain a written statement from the administrator of a government program under which the family receives benefits and that examines the annual income of the family each year. The statement must indicate the tenant's family size and state the amount of the family's annual income; or alternatively, the statement must indicate the current dollar limit for VLI or ELI families for the family size of the tenant and state that the tenant's annual income does not exceed this limit.

(e) *Calculation of annual income.* (1) The grantee must calculate the annual income of the family by projecting the prevailing rate of income of the family at the time the grantee determines that the family is income-eligible. Annual income shall include income from all family members and must include the annual income of all families in the unit. Income or asset enhancement derived from the HTF-assisted project shall not be considered in calculating annual income.

(2) The grantee is not required to re-examine the family's income at the time the HTF assistance is provided, unless more than 6 months has elapsed since the grantee determined that the family qualified as income-eligible.

(3) The grantee must follow the requirements in 24 CFR 5.617 when making subsequent income determinations of persons with disabilities who are tenants in HTF-assisted rental housing.

Eligible and Prohibited Activities

§ 92.730 Eligible activities: General.

(a)(1) HTF funds may be used for the production, preservation, and rehabilitation of affordable rental housing and affordable housing for first-time homebuyers through the acquisition (including assistance to homebuyers), new construction, reconstruction, or rehabilitation of nonluxury housing with suitable amenities, including real property acquisition, site improvements, conversion, demolition, and other expenses, including financing costs, relocation expenses of any displaced persons, families, businesses, or organizations; for operating costs of HTF-assisted rental housing; and for reasonable administrative and planning costs. Not more than 20 percent of the annual grant may be used for operating cost assistance. Operating cost assistance may be provided only to rental housing acquired, rehabilitated, preserved, or newly constructed with HTF funds. Not more than 10 percent of the annual grant shall be used for housing for homeownership. HTF-assisted housing must be permanent or transitional housing. The specific eligible costs for these activities are found in §§ 92.731 and 92.732. The activities and costs are eligible only if the housing meets the property standards in §§ 92.741 through 92.744, as applicable, upon project completion.

(2) Acquisition of vacant land or demolition must be undertaken only with respect to a particular housing project intended to provide affordable housing within the time frames established in the definition of "commitment" in § 92.702(b).

(3) A unit of general local government may purchase improved or unimproved land for use for HTF-assisted units to be part of a transit-oriented development within the time frame established in the "commitment" definition of "commit to a transit oriented development" in § 92.702. The unit of general local government must own the improved or unimproved property until the project meets the requirement for "commit to a specific local project" in § 92.702. If the unit of general local government does not have a commitment for a specific HTF-assisted project within 36 months from the date of the contract to acquire the property, the cost to purchase or the current value of the property, whichever is greater, must be repaid to the grantee's HTF account from which the funds were drawn (*i.e.,* local or Treasury account). The amount repaid must be prorated in proportion to the amount of HTF funds to total funds used to purchase the land.

(4) HTF funds may be used to purchase and/or rehabilitate a manufactured housing unit, or purchase the land upon which a manufactured housing unit is located. The manufactured housing unit must, at the time of project completion, be connected to permanent utility hook-ups and be located on land that is owned by the manufactured housing unit owner or land for which the manufactured housing owner has a lease for a period at least equal to the applicable period of affordability.

(b) *Forms of assistance.* A grantee may invest HTF funds as equity investments, interest-bearing loans or advances, non-interest-bearing loans or advances, interest subsidies consistent with the purposes of this subpart, deferred payment loans, grants, or other forms of assistance that HUD determines to be consistent with the purposes of this part. Each grantee has the right to establish the terms of assistance, subject to the requirements of this part.

(c) *Multi-unit projects.* (1) HTF funds may be used to assist in the development of one or more housing units in a multi-unit project. Only the actual HTF eligible development costs of the assisted units may be charged to the HTF program. If the assisted and non-assisted units are not comparable, the actual costs may be determined based on a method of cost allocation. If the assisted and non-assisted units are comparable in terms of size, features, and number of bedrooms, the actual cost of the HTF-assisted units can be determined by prorating the total HTF-eligible development costs of the project so that the proportion of the total development costs charged to the HTF program does not exceed the proportion of the HTF-assisted units in the project.

(2) After project completion, the number of HTF-assisted units designated as part of the development process may not be reduced, except that in a project consisting of all HTF-assisted units, one unit may be converted to an onsite manager's unit if the grantee determines the conversion is reasonable and that, based on one fewer HTF-assisted unit, the costs charged to the HTF program do not exceed the actual costs of the HTF-assisted units and do not exceed the subsidy limit established pursuant to § 92.740(a).

(d) *Terminated projects.* An HTF-assisted project that is terminated before completion, either voluntarily or otherwise, constitutes an ineligible activity and the grantee must repay any HTF funds invested in the project to the HTF account from which the funds were drawn (*i.e.,* local or Treasury account), in accordance with § 92.773(b). A project that does not meet the requirements for affordable housing must be terminated and the HTF funds must be repaid to the grantee's HTF account.

§ 92.731 Eligible project costs.

HTF funds may be used to pay the following eligible costs:

(a) *Development hard costs.* The actual cost of constructing or rehabilitating housing. These costs include the following:

(1) For new construction projects, costs to meet the new construction standards in § 92.741;

(2) For rehabilitation projects, costs to meet the property standards for rehabilitation projects in § 92.742;

(3) For both new construction and rehabilitation projects, costs:

(i) To demolish existing structures;

(ii) To make utility connections including offsite connections from the property line to the adjacent street; and

(iii) To make improvements to the project site that is in keeping with improvements of surrounding, standard projects. Site improvements may include onsite roads and sewer and water lines necessary to the development of the project. The project site is the property, owned by the project owner, upon which the project is located.

(4) For both new construction and rehabilitation of multifamily rental housing projects, costs to construct or rehabilitate laundry and community facilities that are located within the same building as the housing and that are for the use of the project residents and their guests.

(5) Costs to make utility connections or to make improvements to the project site, in accordance with the paragraphs (a)(3)(ii) and (iii) of this section, are also eligible, in connection with acquisition of standard housing.

(b) *Refinancing costs.* (1) The cost to refinance existing debt secured by rental housing units that are being rehabilitated with HTF funds, but only if the refinancing is necessary to reduce the overall housing costs and to make the housing more affordable and proportional to the number of HTF-assisted units in the rental project. The proportional rehabilitation cost must be greater than the proportional amount of debt that is refinanced.

(2) The grantee must establish refinancing guidelines and state them in its consolidated plan described in 24 CFR part 91. The guidelines shall describe the conditions under which the grantee will refinance existing debt. At minimum, the guidelines must demonstrate that rehabilitation is the primary eligible activity and ensure that this requirement is met by establishing a minimum level of rehabilitation per unit or a required ratio between rehabilitation and refinancing.

(c) *Acquisition costs.* Costs of acquiring improved or unimproved real property, including acquisition by homebuyers.

(d) *Related soft costs.* Other reasonable and necessary costs incurred by the owner or grantee and associated with the financing or development (or both) of new construction, rehabilitation, or acquisition of housing assisted with HTF funds. These costs include, but are not limited to:

(1) Architectural, engineering, or related professional services required to prepare plans, drawings, specifications, or work write-ups.

(2) Costs to process and settle the financing for a project, such as private lender origination fees, credit reports, fees for title evidence, fees for recordation and filing of legal documents, building permits, attorney's fees, private appraisal fees, fees for an independent cost estimate, and builder's or developer's fees.

(3) Costs of a project audit and certification of costs performed by a certified public accountant that the grantee may require with respect to the development of the project.

(4) Costs to provide information services such as affirmative marketing and fair housing information to prospective homeowners and tenants, as required by § 92.760.

(5) For new construction and rehabilitation of rental housing, the cost of funding an initial operating deficit reserve, which is a reserve to meet any shortfall in project income during the period of project rent-up (not to exceed the amount necessary for a period of 18 months). Any HTF funds that are placed in an operating deficit reserve that remain unexpended after the project rent-up may be retained for project reserves if permitted by the participating jurisdiction.

(6) Staff and overhead costs of the grantee directly related to carrying out the project, such as work specifications preparation, loan processing, and inspections. For multi-unit projects, such costs must be allocated among HTF-assisted units in a reasonable manner and documented. These costs cannot be charged to or paid by the assisted families.

(7) For both new construction and rehabilitation, costs for the payment of impact fees that are charged for all projects within a jurisdiction.

(8) Costs to address and meet environmental and historic preservation property standards on the project, including any necessary studies, research, or mitigation in accordance with §§ 92.741(f) and 92.742(c).

(e) *Operating cost assistance; and operating cost assistance reserves.* For HTF-assisted units for which project-based assistance is not available, when necessary and subject to the limitations in § 92.730(a), HTF funds may be used to pay for operating costs and operating cost assistance reserves, as follows:

(1) Operating costs for insurance, utilities, real property taxes, and maintenance and scheduled payments to a reserve for replacement of major systems (provided that the payments must be based on the useful life of each major system and expected replacement cost) of an HTF-assisted unit. The eligible amount of HTF funds per unit for operating cost assistance is determined based on the deficit remaining after the monthly rent payment for the HTF-assisted unit is applied to the HTF-assisted unit's share of monthly operating costs. The grantee may agree to provide operating cost assistance during the entire period of affordability, subject to the availability of funds. The maximum amount of the operating assistance to be provided to an HTF-assisted rental project must be specified in a written agreement between the grantee and the recipient. The grantee may provide for the amount of expected operating cost assistance necessary for the project in the written agreement, for a period of not more than two years, which may be renewed during the period of affordability, subject to the availability of funds. The amount of HTF funds for operating cost assistance that a grantee may provide to a project from any fiscal year HTF grant may not exceed the eligible amount for operating cost assistance for the HTF-assisted units in a project for a period of not greater than two years.

(2) Operating Cost Assistance Reserves may be established by the grantee for HTF-assisted projects where such reserves are deemed necessary by the grantee to ensure a project's financial feasibility. The allowable amount of an operating cost reserve shall not exceed, for a period of more than 5 years, the amount determined to be necessary to provide operating cost assistance for HTF-assisted units, as determined by the grantee, based on an analysis of potential deficits remaining after the expected rent payments for the HTF-assisted unit are applied to the HTF-assisted unit's expected share of operating costs.

(f) *Relocation costs.* The cost of relocation payments and other relocation assistance to persons displaced by the project are eligible costs.

(1) Relocation payments include replacement housing payments, payments for moving expenses, and payments for reasonable out-of-pocket costs incurred in the temporary relocation of persons.

(2) Other relocation assistance means staff and overhead costs directly related to providing advisory and other relocation services to persons displaced by the project, including timely written notices to occupants, referrals to comparable and suitable replacement property, property inspections, counseling, and other assistance necessary to minimize hardship.

(g) *Costs relating to payment of loans.* If the HTF funds are not used to directly pay a cost specified in this section, but

are used to pay off a construction loan, bridge financing loan, or guaranteed loan, the payment of principal and interest for such loan is an eligible cost only if:

(1) The loan was used for eligible costs specified in this section,

(2) The HTF assistance is part of the original financing for the project, and

(3) The project meets the requirements of this subpart.

(h) *Construction undertaken before the HTF funds are committed to the project.* HTF funds cannot be used for development hard costs, as provided in paragraph (a) of this section, including acquisition of construction undertaken before the HTF funds are committed to the project. However, the written agreement committing the HTF funds to the project may authorize HTF funds to be used for architectural and engineering costs and other related soft costs, as provided in paragraphs (d)(1) and (2) of this section, that were incurred before HTF funds were committed to the project.

§ 92.732 Eligible administrative and planning costs.

(a) *General.* A grantee may expend, for payment of reasonable administrative and planning costs of the HTF program, an amount of HTF funds that is not more than 10 percent of the fiscal year HTF grant. A grantee may also expend, for payment of reasonable administrative and planning costs of the HTF program, a sum up to 10 percent of the program income deposited into its local account or received and reported by its subgrantees during the program year. A grantee may expend such funds directly or may authorize its subgrantees, if any, to expend all or a portion of such funds, provided that total expenditures for planning and administrative costs do not exceed the maximum allowable amount. For purposes of this section, "reasonable administrative and planning costs" are the costs described in paragraphs (b) through (h) of this section.

(b) *General management, oversight, and coordination.* Reasonable costs of overall program management, coordination, monitoring, and evaluation. Such costs include, but are not limited to, necessary expenditures for the following:

(1) Salaries, wages, and related costs of the grantee's staff. In charging costs to this category, the grantee may either include the entire salary, wages, and related costs (allocable to the program) of each person whose primary responsibilities with regard to the program involve program administration assignments or the prorated share of the salary, wages, and related costs of each person whose job includes any program administration assignments. The grantee may use only one of these methods. Program administration includes the following types of assignments:

(i) Developing systems and schedules for ensuring compliance with program requirements;

(ii) Developing interagency agreements and agreements with entities receiving HTF funds;

(iii) Monitoring HTF-assisted housing for progress and compliance with program requirements;

(iv) Preparing reports and other documents related to the program for submission to HUD;

(v) Coordinating the resolution of audit and monitoring findings;

(vi) Evaluating program results against stated objectives; and

(vii) Managing or supervising persons whose primary responsibilities with regard to the program include such assignments as those described in paragraphs (b)(1)(i) through (b)(1)(vi) of this section.

(2) Travel costs incurred for official business in carrying out the program.

(3) Administrative services performed under third party contracts or agreements, including such services as general legal services, accounting services, and audit services.

(4) Other costs for goods and services required for administration of the program, including such goods and services as rental or purchase of equipment, insurance, utilities, office supplies, and rental and maintenance (but not purchase) of office space.

(c) *Staff and overhead.* (1) Staff and overhead costs of the grantee directly related to carrying out the project, such as work specifications preparation; loan processing; inspections; lead-based paint inspections (visual assessments, inspections, and risk assessments); housing counseling; and other services related to assisting potential owners, tenants, and homebuyers; and staff and overhead costs directly related to providing advisory and other relocation services to persons displaced by the project, including timely written notices to occupants, referrals to comparable and suitable replacement property, property inspections, counseling, and other assistance necessary to minimize hardship.

(2) These costs, except housing counseling, may be charged as administrative costs or as project costs under §§ 92.731(d)(5) and 92.731(f)(2), at the discretion of the grantee; however, these costs cannot be charged to or paid by the assisted families.

(d) *Public information.* The provision of information and other resources to residents and citizen organizations participating in the planning, implementation, or assessment of projects being assisted with HTF funds.

(e) *Fair housing.* Activities to affirmatively further fair housing, in accordance with the grantee's certification under 24 CFR part 91.

(f) *Indirect costs.* Indirect costs may be charged to the HTF program under a cost allocation plan prepared in accordance with OMB Circulars A–87 or A–122, as applicable.

(g) *Preparation of the consolidated plan.* Preparation of the consolidated plan required under 24 CFR part 91. Preparation includes the costs of public hearings, consultations, and publication.

(h) *Other Federal requirements.* Costs of complying with the Federal requirements in §§ 92.760 through 92.764 of this subpart.

§ 92.734 HTF funds and public housing.

(a) HTF funds may not be used for public housing, including public housing that is developed under section 24 of the 1937 Act (HOPE VI).

(b) HTF-assisted housing may not receive operating assistance under section 9 of the 1937 Act during the HTF period of affordability.

(c) Consistent with § 92.730(c), HTF funds may be used for affordable housing in a project that also contains public housing units, provided that the HTF funds are not used for the public housing units and HTF funds are used only for eligible costs, in accordance with this subpart.

§ 92.735 Prohibited activities and fees.

(a) HTF funds may not be used to:

(1) Provide assistance (other than assistance to a homebuyer to acquire housing previously assisted with HTF funds) to a project previously assisted with HTF funds during the period of affordability established by the grantee in the written agreement under § 92.774. However, additional HTF funds may be committed to a project up to one year after project completion, but the amount of HTF funds in the project may not exceed the maximum per-unit subsidy amount established pursuant to § 92.740.

(2) Pay for the acquisition of property owned by the grantee, except for property acquired by the grantee with HTF funds or property acquired in anticipation of carrying out an HTF project.

(3) Pay delinquent taxes, fees, or charges on properties to be assisted with HTF funds.

(4) Pay for political activities, advocacy, lobbying (whether directly or through other parties), counseling services (except for housing counseling), travel expenses (other than those eligible under § 92.732(b)), or preparing or providing advice on tax returns. The prohibited use of funds for political activities includes influencing the selection, nomination, election, or appointment of one or more candidates to any Federal, State, or local office as codified in section 501 of the Internal Revenue Code of 1986 (26 U.S.C. 501).

(5) Pay for administrative, outreach, or other costs to manage and operate the grantee of HTF funds, except those administrative costs necessary to carry out the HTF program, including housing counseling.

(6) Pay for any cost that is not eligible under § 92.731 and § 92.732.

(b)(1) The grantee may not charge (and must prohibit subgrantees and recipients from charging) servicing, origination, or other fees for the costs of administering the HTF program (except as allowed in § 92.731(d)(2)). However, the grantee may charge owners of rental projects reasonable annual fees for monitoring compliance during the period of affordability and may charge nominal application fees (although these fees are not an eligible HTF cost) to eligible recipients, to discourage frivolous applications.

(2) The amount of application fees must be appropriate to the type of application and may not create an undue impediment to an ELI family to be able to participate in the grantee's program. All fees are applicable credits under OMB Circular A–87.

(3) In addition, the grantee must prohibit project owners from charging origination fees, parking fees that exceed usual and customary charges, laundry room access fees, and other fees; however, rental project owners may charge reasonable application fees to prospective tenants.

Income Targeting

§ 92.736 Income targeting: Rental units.

Unless otherwise directed by HUD at the time of allocation of HTF funds for a fiscal year, in each fiscal year, not less than 75 percent of HTF grant amounts provided to rental projects under each grant must be used for the benefit of ELI families or families with incomes at or below the poverty line, whichever is greater. For the first year of HTF funding, States must use 100 percent of HTF rental housing funding for the benefit of ELI families or families with incomes at or below the poverty line, whichever is greater. For subsequent funding years, HUD will advise the percentage of funds to be used for the benefit of ELI families or families with incomes at or below the poverty line, if such percentage is to be greater than 75 percent.

§ 92.737 Income targeting: Homeownership.

Unless otherwise directed by HUD at the time of allocation of HTF funds for a fiscal year, in each fiscal year, not less than 75 percent of HTF grant amounts provided to homeownership projects under each grant must be used for the benefit of ELI families or families with incomes at or below the poverty line, whichever is greater. For the first year of HTF funding, each assisted homeownership unit must be for purchase only by ELI families, or families with incomes at or below the poverty line, whichever is greater, who qualify as first-time homebuyers. For subsequent funding years, HUD will advise the percentage of funds to be used for the benefit of ELI families or families with incomes at or below the poverty line, if such percentage is to be greater than 75 percent.

Project Requirements

§ 92.740 Maximum per-unit subsidy amount, underwriting, and subsidy layering.

(a) *Maximum per-unit development subsidy amount.* The grantee must establish maximum limitations on the total amount of HTF funds that the grantee may invest per-unit for development, with adjustments for the number of bedrooms and the geographic location of the project. The grantee must include these limits in its consolidated plan and update these limits annually.

(b) *Underwriting and subsidy layering.* Before committing funds to a project, the grantee must evaluate the project in accordance with guidelines that it has adopted for this purpose and make a determination that it will not invest any more HTF funds, alone or in combination with other governmental assistance, than is necessary to provide quality affordable housing that is financially viable for a reasonable period (at a minimum, the period of affordability in § 92.746 or § 92.748) and will not provide undue return on the owner's or developer's investment or undue profit. This analysis must include any operating cost assistance or project-based rental assistance that will be provided to the project. In addition, the grantee must examine the sources and uses of funds for the project, and determine that the costs are reasonable.

§ 92.741 Property standards: New construction projects and gut rehabilitation projects.

(a) *State and local codes, ordinances, and zoning requirements.* (1) Housing that is constructed or has undergone gut rehabilitation with HTF funds must meet all applicable State and local codes, ordinances, and zoning requirements. HTF-assisted new construction and gut rehabilitation projects must meet the International Residential Code or International Building Code (as applicable to the type of housing) of the International Code Council, or State or local residential and building codes for new construction or gut rehabilitation. The housing must meet the applicable requirements upon project completion.

(2) All new construction and gut rehabilitation housing must also meet the requirements described in paragraphs (b) through (f) of this section:

(b) *Lead-based paint.* The housing must meet the lead-based paint requirements at 24 CFR part 35.

(c) *Accessibility.* (1) The housing must meet the accessibility requirements at 24 CFR part 8, which implements section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

(2) Covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implements the Fair Housing Act (42 U.S.C. 3601–3619).

(3) Construction may include improvements that permit use by persons with disabilities, but are not required by regulation or statute.

(d) *Energy and water efficiency.* Upon completion, the housing must meet energy and water efficiency standards, as set forth in paragraphs (d)(1), (2), and (3) of this section.

(1) All residential buildings up to three stories must meet the guidelines for ENERGY STAR-Qualified New Homes, as certified by a qualified Home Energy Rater. The requirement for ENERGY STAR certification by a qualified Home Energy Rater shall apply to all projects to which funds are committed after 6 months from the effective date of this rule.

(2) All mid- or high-rise multifamily housing over three stories must exceed, by 20 percent, the minimum energy efficiency requirements defined by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 90.1–2007, Appendix G: Performance Rating Method. When the ASHRAE standard is updated, the updated standard, plus 20 percent, must be applied to all projects

with HTF funds committed after the date that the updated standard is published. At such time as an ENERGY STAR standard is established for all housing taller than three stories, the ENERGY STAR guidelines and certification requirements shall apply.

(3) All water-usage products installed in HTF-assisted units must be certified "WaterSense"-labeled products, including toilets, showers, and faucets.

(e) *Disaster mitigation.* Where relevant, the housing must be constructed or rehabilitated to mitigate the impact of potential disasters (*e.g.,* earthquakes, hurricanes, flooding, and wildfires), in accordance with State and local codes, ordinances, and requirements, or such other requirements as the Secretary of HUD may establish.

(f) *Environmental review requirements.* (1) *Historic preservation.* (i) The project activities (including demolition) must not be performed on properties that are either listed in or determined eligible for listing in the National Register of Historic Places, or identified as historic by the State, territory, Tribe, or municipality (*i.e.,* listed in a State or local inventory of historic places, or designated as a State or local landmark or historic district by appropriate law or ordinance), unless the project activities comply with at least one of the following conditions:

(A) The project activities must meet the *Secretary of the Interior's Standards for Rehabilitation,* as verified by someone that meets the *Secretary of the Interior's Professional Qualification Standards;*

(B) The project activities must comply with the State (or territory) historic preservation law and requirements (applies to projects that are defined as State-assisted); or

(C) Project activities must comply with local historic preservation ordinances and permit conditions (applies to projects affecting locally designated historic landmarks or districts).

(ii) *Archaeological resources.* If archaeological resources or human remains are discovered on the project site during construction, the recipient must comply with applicable State (or territory) law and/or local ordinance (*e.g.,* State unmarked burial law).

(2) *Farmland.* Project activities must not result in the conversion of unique, prime, or statewide or locally significant agricultural properties to urban uses.

(3) *Airport zones.* Projects are not permitted within the runway protection zones of civilian airports, or the clear zones or accident potential zones of military airfields.

(4) *Coastal Barrier Resource System.* No projects may be assisted in Coastal Barrier Resource System (CBRS) units. CBRS units are mapped and available from the U.S. Fish and Wildlife Service.

(5) *Coastal zone management.* Development must be consistent with the appropriate State coastal zone management plan. Plans are available from the local coastal zone management agency.

(6) *Floodplains.* Except as modified below, definitions for terms used below can be found at 24 CFR part 55.

(i) Construction and other activities in the 100-year floodplain are to be avoided when practicable. If there are no practicable alternatives to new construction or substantial improvement in the 100-year floodplain, the structure must be elevated at least to the base flood elevation (BFE) or floodproofed to one foot above the BFE. Elevated and floodproofed buildings must adhere to National Flood Insurance Program standards. The primary sources of floodplain data are Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRMs). In certain situations, including but not limited to, post-disaster development or redevelopment, interim FEMA information will be the source of these designations. If FEMA information is unavailable, other Federal, State, or local data may be used.

(ii) No Housing Trust Fund financial assistance may be approved with respect to:

(A) Any action, other than a functionally dependent use, located in a floodway;

(B) Any critical action located in a coastal high hazard area, 100- or 500-year floodplain; or

(C) Any non-critical action located in a coastal high hazard area, unless the action is designed for location in a coastal high hazard area consistent with the FEMA National Flood Insurance Program requirements for V–Zones.

(7) *Wetlands.* (i) No draining, dredging, channelizing, filling, diking, impounding, or related grading activities are to be performed in wetlands. No activities, structures, or facilities funded under this program are to adversely impact a wetland.

(ii) A wetland means those areas that are inundated by surface or ground water with a frequency sufficient to support, and under normal circumstances, does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds. This definition includes those wetlands areas separated from their natural supply of water as a result of activities, such as the construction of structural flood protection methods or solid-fill road beds, or mineral extraction and navigation improvements. This definition is independent of the definition of jurisdictional wetland used by the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*).

(8) *Explosives and hazards.* Projects must be in compliance with the standards for acceptable separation distance, as set forth at 24 CFR part 51, Subpart C.

(9) *Contamination.* It is HUD policy that all properties to be used in the HTF program be free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property.

(i) All proposed multifamily (more than 4 housing units) development of HUD-assisted HTF project activities requires a Phase I Environmental Site Assessment (ESA–ASTM–E 1527–05). If the Phase I ESA identifies recognized environmental concerns (RECs), a Phase II (ESA–ASTM–E 1903–97) will be required. Single-family properties (up to 4 units) do not require a Phase I ESA.

(ii) HTF projects must avoid sites located within 0.25 miles of a Superfund or CERCLIS (Comprehensive Environmental Response, Compensation, and Liability Information System) site or other contaminated site reported to Federal, State, or local authorities without a statement in writing from the U.S. Environmental Protection Agency (EPA) or the appropriate State agency that there is no hazard that could affect the health and safety of the occupants or conflict with the intended utilization of the property.

(10) *Noise.* (i) Internal noise levels: All activities will be developed to ensure an interior noise level of 45 decibels (dB).

(ii) External noise levels:

(A) Project sites exposed to less than or equal to 65 dB of environmental noise are acceptable.

(B) Sites between 65 dB and less than 75 dB are acceptable with mitigation *(e.g.,* noise walls, careful site planning) that results in an interior standard of 45 dB.

(C) Locations with environmental noise levels of 75 dB or greater may not have noise sensitive outdoor uses (*e.g.,* picnic areas, totlots, balconies, or

patios) and require sound attenuation in the building shell to achieve the 45 dB interior standard.

(11) *Endangered species.* Recipients must avoid all actions which could jeopardize the continued existence of any endangered or threatened species, as designated by U.S. Fish and Wildlife Service or National Marine Fisheries Service, or would result in the destruction or adversely modify the designated critical habitat of such species.

(12) *Wild and scenic rivers.* Recipients must avoid activities that are inconsistent with conservation easements, land-use protections, and restrictions adjacent to wild and scenic rivers, as designated/listed by the Departments of Agriculture or Interior. Maps for the National Wild and Scenic Rivers System are available at the governing departments.

(13) *Safe drinking water.* Projects with a potable water system must use only lead-free pipes, solder, and flux.

(14) *Sole-source aquifers.* Project activities should avoid sites and activities that have the potential to contaminate sole source aquifer areas (SSAs). The EPA defines a sole or principal source aquifer as an aquifer that supplies at least 50 percent of the drinking water consumed in the area overlying the aquifer. If the project overlies an SSA, the EPA must review the project. The EPA review is designed to reduce the risk of ground water contamination, that could pose a health hazard to those who use it.

(g) *Written standards for methods and materials, plans, specifications, work write-ups, and cost estimates.* (1) The grantee must establish written standards for methods and materials to be used for new construction and gut rehabilitation.

(2) The grantee must ensure that plans and specifications for new construction or work write-ups for gut rehabilitation that describe the work to be undertaken are in compliance with State and local codes, ordinances, requirements, and the grantee's standards for methods and materials.

(3) The grantee must review and approve a written cost estimate based upon a finding of cost reasonableness.

(h) *Property inspections.* The grantee must establish written procedures for initial, progress, and final inspections during construction including:

(1) Detailed inspection checklists;

(2) Description of how and by whom inspections will be carried out; and

(3) Procedures for training and certifying qualified inspectors.

(i) Frequency of inspections.

(1) For gut rehabilitation, the grantee must conduct an initial property inspection to identify the deficiencies that must be addressed.

(2) The grantee must conduct progress and final inspections to ensure that work is done in accordance with approved standards for methods and materials, plans, specifications, and work write-ups, as applicable to the work.

(3) In accordance with § 92.774(d), the grantee must comply with ongoing responsibilities for onsite inspections during the affordability period.

(j) *Payment schedule.* The grantee must have procedures to ensure that progress payments are consistent with the amount of work performed and that final payment does not occur until project completion.

§ 92.742 Property standards: Rehabilitation projects.

Housing that has undergone gut rehabilitation with HTF funds must meet the requirements of § 92.741. All other rehabilitation must meet the requirements of this part.

(a) *State and local codes, ordinances, and zoning requirements.* Housing that is rehabilitated with HTF funds must meet all applicable State and local codes, ordinances, and requirements. The housing must meet the applicable requirements upon project completion.

(b) *Written standards for methods and materials.* The grantee must establish written standards for methods and materials to be used for rehabilitation work and describe these standards in its consolidated plan, whether or not there are applicable State or local rehabilitation codes. The housing must meet the grantee's standards upon project completion. The grantee's description of its standards must be in sufficient detail to establish the basis for a uniform inspection of the property. At a minimum, the grantee's standards must cover all items included in HUD's most recent Uniform Physical Condition Standards (UPCS) Comprehensive Listing of Inspectable Areas, or such other requirements as the Secretary of HUD may establish. The grantee's rehabilitation standards must address each of the following:

(1) *Health and safety.* The housing must be free of all health and safety defects. The grantee's standards must identify life-threatening deficiencies that must be addressed.

(2) *Habitability and functionality.* The housing must meet minimum standards of habitability and functionality for each of the following areas: site, building exterior, building systems, dwelling units, and common areas. All inspected items with an observed deficiency (OD) must be corrected.

(3) *Major systems.* Upon project completion, each of the following major systems must have a useful life for a minimum of 15 years. The grantee may specify a longer period.

(i) Structural support;

(ii) Roofing;

(iii) Cladding and weatherproofing (*e.g.,* windows, doors, siding, gutters);

(iv) Plumbing;

(v) Electrical; and

(vi) Heating, ventilation, and air conditioning.

(4) *Lead-based paint.* The housing must meet the lead-based paint requirements at 24 CFR part 35.

(5) *Accessibility.* (i) The housing must meet the accessibility requirements at 24 CFR part 8, which implements section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

(ii) If the rehabilitation includes an addition, covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implements the Fair Housing Act (42 U.S.C. 3601–3619).

(iii) Rehabilitation may include improvements that are not required by regulation or statute that permit use by persons with disabilities.

(6) *Energy and water efficiency.* ENERGY STAR-labeled and WaterSense-labeled products must be installed when older obsolete products (such as windows, doors, lighting, fans, water heaters, furnaces, boilers, air conditioning units, refrigerators, clothes washers, dryers, dishwashers, toilets, showers, and faucets) are replaced as part of the approved rehabilitation work, and such products are appropriate for achieving energy efficiency for the climate area in which the housing is located.

(7) *Disaster mitigation.* Where relevant, the housing must be improved to mitigate the impact of potential disasters (*e.g.,* earthquakes, hurricanes, flooding, wildfires) in accordance with State and local codes, ordinances, and requirements, or such other requirements as the Secretary of HUD may establish.

(8) *Other improvements.* Discretionary housing improvements beyond those described in paragraphs (b)(1) through (7) of this section may include modest amenities and aesthetic features that are in keeping with housing of similar type in the community and must avoid luxury improvements, as defined by the grantee.

(c) *Environmental requirements.* (1) *Historic preservation.* (i) The project activities (including demolition) must not be performed on properties that are either listed in or determined eligible

for listing in the National Register of Historic Places, or identified as historic by the State, territory, Tribe, or municipality (*i.e.,* listed in a State or local inventory of historic places, or designated as a State or local landmark or historic district by appropriate law or ordinance), unless the project activities comply with at least one of the following conditions:

(A) The project activities must meet the *Secretary of the Interior's Standards for Rehabilitation,* either as certified through the Federal and/or State historic rehabilitation tax credit programs or as verified by someone that meets the *Secretary of the Interior's Professional Qualification Standards;*

(B) The project activities must comply with the State (or territory) historic preservation law and requirements (applies to projects that are defined as State-assisted); or

(C) Project activities must comply with local historic preservation ordinances and permit conditions (applies to projects affecting locally designated historic landmarks or districts).

(ii) *Archaeological resources.* If archaeological resources or human remains are discovered on the project site during construction or rehabilitation, the recipient must comply with applicable State (or territory) law and/or local ordinance (*e.g.,* State unmarked burial law).

(2) *Farmland.* Project activities must not result in the conversion of unique, prime, or locally significant agricultural properties to urban uses.

(3) *Airport zones.* Projects are not permitted within the runway protection zones of civilian airports, or the clear zones or accident potential zones of military airfields.

(4) *Coastal Barrier Resource System.* No projects may be assisted in Coastal Barrier Resource System (CBRS) units. CBRS units are mapped and available from the U.S. Fish and Wildlife Service.

(5) *Coastal zone management.* Development must be consistent with the appropriate State coastal zone management plan. Plans are available from the local coastal zone management agency.

(6) *Floodplains.* Except as modified below, definitions for terms used below can be found at 24 CFR part 55.

(i) Construction and other activities in the 100-year floodplain are to be avoided when practicable. If there are no practicable alternatives to new construction or substantial improvement in the 100-year floodplain, the structure must be elevated at least to the base flood elevation (BFE) or floodproofed to one foot above the BFE. Elevated and floodproofed buildings must adhere to National Flood Insurance Program standards. The primary sources of floodplain data are Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRMS). In certain situations, including, but not limited to, post-disaster development or redevelopment, interim FEMA information will be the source of these designations. If FEMA information is unavailable, other Federal, State, or local data may be used.

(ii) No HTF financial assistance may be approved with respect to:

(A) Any action, other than functionally dependent uses, located in a floodway;

(B) Any critical action located in a coastal high hazard area, 100- or 500-year floodplain; or

(C) Any non-critical action located in a coastal high hazard area, unless the action is designed for location in a coastal high hazard area consistent with the FEMA National Flood Insurance Program requirements for V–Zones.

(7) *Wetlands.* No rehabilitation of existing properties that expands the footprint into a wetland is allowed. A wetland means those areas that are inundated by surface or ground water with a frequency sufficient to support, and under normal circumstances, does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds. This definition includes those wetlands areas separated from their natural supply of water as a result of activities such as the construction of structural flood protection methods or solid-fill road beds and activities such as mineral extraction and navigation improvements. This definition is independent of the definition of jurisdictional wetland used by the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*).

(8) *Explosives and hazards.* If the rehabilitation of the building increases the number of dwelling units, then the project must be in compliance with the standards for acceptable separation distance as set forth at 24 CFR part 51, subpart C.

(9) *Contamination.* It is HUD policy that all properties to be used in the HTF be free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property:

(i) All proposed multifamily (more than four housing units) development of HUD-assisted HTF project activities requires a phase I Environmental Site Assessment (ESA–ASTM–E 1527–05). If the Phase I ESA identifies recognized environmental concerns (RECs), a Phase II (ESA–ASTM–E 1903–97) will be required. Single-family properties (up to four units) do not require a Phase I ESA.

(ii) Must avoid sites located within 0.25 miles of a Superfund or CERCLIS (Comprehensive Environmental Response, Compensation, and Liability Information System) site or other contaminated site reported to Federal, State, or local authorities without a statement in writing from the EPA or the appropriate State agency that there is no hazard that could affect the health and safety of the occupants or conflict with the intended utilization of the property.

(10) *Noise.* (i) Internal noise levels: All activities will be developed to ensure an interior noise level of 45 decibels (dB).

(ii) External noise levels:

(A) Project sites exposed to less than or equal to 65 dB of environmental noise are acceptable.

(B) Sites between 65 dB and less than 75 dB may be acceptable with mitigation (*e.g.,* noise walls, careful site planning) that results in an interior standard of 45 dB.

(C) Locations with environmental noise levels of 75 dB or greater may not have noise sensitive outdoor uses (*e.g.,* picnic areas, totlots, balconies, or patios) and *require* sound attenuation in the building shell to achieve the interior standard.

(11) *Endangered species.* (i) Recipients must avoid all actions that could jeopardize the continued existence of any species designated by the U.S. Fish and Wildlife Service or National Marine Fisheries as endangered or threatened.

(ii) Recipients must avoid all actions that adversely modify the critical habitat of such species.

(12) *Wild and scenic rivers.* Recipients must avoid activities that are inconsistent with conservation easements, land-use protections, and restrictions adjacent to wild and scenic rivers, as designated/listed by the Departments of Agriculture and Interior. Maps for the National Wild and Scenic Rivers System are available at the governing departments.

(13) *Safe drinking water.* Projects with a potable water system must use only lead-free pipes, solder, and flux.

(14) *Sole-source aquifers.* Project activities should avoid sites and

activities that have the potential to contaminate sole source aquifer areas (SSAs). The EPA defines a sole or principal source aquifer as an aquifer that supplies at least 50 percent of the drinking water consumed in the area overlying the aquifer. If the project overlies an SSA, the EPA must review the project. The EPA review is designed to reduce the risk of ground water contamination, which could pose a health hazard to those who use it.

(d) *Work write-ups and cost estimates.* (1) The grantee must ensure that a work write-up that describes the work to be undertaken is in compliance with State and local codes, ordinances, requirements, and the grantee's standards for methods and materials.

(2) The grantee must review and approve a written cost estimate based upon a finding of cost reasonableness.

(e) *Property inspections.* The grantee must establish written inspection procedures for initial, progress, and final inspections during construction *(see* § 92.774(d) for the grantee's ongoing responsibilities for onsite inspections during the affordability period) including:

(1) Detailed inspection checklists;

(2) Description of how and by whom inspections will be carried out; and

(3) Procedures for training and certifying qualified inspectors.

(f) *Frequency of inspections.* (1) The grantee must conduct an initial property inspection to identify the deficiencies that must be addressed.

(2) The grantee must conduct progress and final inspections to ensure that work is done in accordance with approved standards for methods and materials, and work write-ups.

(3) In accordance with § 92.774(d), the grantee must comply with ongoing responsibilities for onsite inspections during the affordability period.

(g) *Payment schedule.* The grantee must have procedures to ensure that progress payments are consistent with the amount of work performed and that final payment does not occur until all punch list items are completed.

§ 92.743 Property standards: Acquisition of standard housing.

(a) Existing housing that is acquired with HTF assistance, and has been newly constructed or gut-rehabilitated less than 12 months before the commitment of HTF funds, must meet the property standards at § 92.741 for new construction and gut rehabilitation projects. The grantee must document this compliance based upon a review of approved building plans and Certificates of Occupancy, and a current inspection that is conducted no earlier than 30 days prior to the commitment of HTF assistance.

(b) All other existing housing that is acquired with HTF assistance must meet the property standards requirements of § 92.742. The grantee must document this compliance based upon a current inspection that is conducted no earlier than 30 days prior to the commitment of HTF assistance, in accordance with the inspection procedures that the grantee established pursuant to § 92.742.

(c) If the property does not meet these standards, with the exception of noise standards at § 92.741(f)(10) or § 92.742(c)(10), the property must be rehabilitated to meet the standards of § 92.741 or § 92.742, as applicable.

§ 92.744 Property standards: Manufactured housing.

(a) *Compliance With manufactured home construction and safety standards.* Construction of all manufactured housing must meet the Manufactured Home Construction and Safety Standards codified at 24 CFR part 3280. These standards pre-empt State and local codes covering the same aspects of performance for such housing.

(b) *Installation and standards for new construction and gut rehabilitation of manufactured housing projects.* (1) If the grantee provides HTF assistance to install a manufactured housing unit, the installation must comply with applicable State and local laws or codes. In the absence of such laws or codes, the installation must comply with the manufacturer's written instructions for installation. Manufactured housing constructed or rehabilitated using HTF funds must be on a permanent foundation. The grantee must document this compliance in accordance with the inspection procedures that the grantee has established pursuant to § 92.742.

(2) Manufactured housing that is newly constructed or has undergone gut rehabilitation using HTF funds must meet the energy and water efficiency standards in § 92.741. An ENERGY STAR-qualified manufactured home is a home that has been designed, produced, and installed in accordance with ENERGY STAR's guidelines by an ENERGY STAR-certified plant. A plant must be certified by a Quality Assurance Provider (QAP), which is an EPA-designated organization that meets certain qualifications, to produce ENERGY STAR-qualified manufactured homes on an ongoing basis. Once certified, a plant must follow ENERGY STAR guidelines for producing and installing homes to maintain its plant certification. To comply with the requirement in § 92.741 to meet the guidelines for ENERGY STAR-Qualified New Homes, a QAP may provide quality assurance oversight for the ENERGY STAR verification process of energy-efficient manufactured homes that cannot be certified by a qualified Home Energy Rater.

(c) *Manufactured housing rehabilitation.* Manufactured housing that is rehabilitated (other than gut rehabilitation) using HTF funds must meet the property standards requirements of § 92.742, as applicable. The grantee must document this compliance in accordance with the inspection procedures that the grantee has established pursuant to § 92.742, as applicable.

(d) *Environmental requirements.* Manufactured housing is subject to the environmental standards in § 92.741(f) for new construction and gut rehabilitation or § 92.742(c) for rehabilitation, as applicable. If an existing property does not meet these standards, the property must be rehabilitated to meet the standards in § 92.741 or § 92.742, as applicable, with the exception of noise standards at § 92.741(f)(10) or § 92.742(c)(10).

§ 92.745 Ongoing property standards: Rental housing.

(a) *Property standards.* The grantee must establish property standards for rental housing (including manufactured housing) that apply throughout the affordability period, and describe these standards in its Consolidated Plan. The standards must ensure that owners maintain the housing as decent, safe, and sanitary housing in good repair. The grantee's description of its property standards must be in sufficient detail to establish the basis for a uniform inspection of the property. At a minimum, the grantee's standards must include all inspectable items included in HUD's most recent Uniform Physical Condition Standards (UPCS) Comprehensive Listing of Inspectable Areas, or such other requirements as the Secretary of HUD may establish. The grantee's ongoing property standards must address each of the following:

(1) *Compliance with State and local codes, ordinances, and requirements.* The housing must meet all applicable State and local codes, ordinances, and requirements.

(2) *Health and safety.* The housing must be free of all health and safety defects. The standards must identify life-threatening deficiencies that the owners must immediately correct and the grantee's time frame for addressing these deficiencies.

(3) *Habitability and functionality.* The housing must meet minimum standards

of habitability and functionality for each of the following areas: site, building exterior, building systems, dwelling units, and common areas. All inspected items with an observed deficiency (OD) must be corrected within a reasonable time frame established by the grantee.

(4) *Lead-based paint.* The housing must meet the lead-based paint requirements at 24 CFR part 35.

(b) *Inspection procedures.* The grantee must have written inspection procedures for ongoing property inspections, in accordance with § 92.774(d). These procedures must include:

(1) Detailed inspection checklists;

(2) Description of how frequently the property inspections will be undertaken;

(3) Description of how and by whom inspections will be carried out; and

(4) Procedures for training and certifying qualified inspectors.

(c) *Corrective and remedial actions.* The grantee must have procedures for ensuring that timely corrective and remedial actions are taken by the project owner to address identified deficiencies.

§ 92.746 Qualification as affordable housing: Rental housing.

(a) *General.* Not less than 75 percent of the HTF grant amounts a grantee provides to rental projects under each grant must be used for the benefit only of ELI families or families at or below the poverty line, whichever is greater, except that in any given fiscal year, the Secretary may establish a higher minimum percentage. The HTF-assisted units in a rental housing project must be occupied only by households that qualify as ELI and must meet the requirements of this section to qualify as affordable housing. The affordability requirements also apply to the HTF-assisted rental units in single-family housing purchased by a first-time homebuyer with HTF funds, in accordance with 24 CFR 92.748(g).

(b) *Rent limitations.* (1) The HTF rent plus utilities shall not exceed the greater of 30 percent of the Federal poverty line or 30 percent of the income of a family whose annual income equals 30 percent of the median income for the area, as determined by HUD, with adjustments for the number of bedrooms in the unit. HUD will publish the HTF rent limits on an annual basis.

(2) If the unit receives Federal or State project-based rental subsidy, the maximum rent is the rent allowable under the Federal or State project-based rental subsidy program.

(c) *Initial rent schedule and utility allowance.* (1) The grantee must establish maximum monthly allowances for utilities and services (excluding telephone, television, and Internet service).

(2) The grantee must annually review and approve rents proposed by the owner for HTF units. For all units for which the tenant is paying utilities, the grantee must ensure that the rents do not exceed the maximum rent minus the monthly allowances for utilities.

(d) *Periods of affordability.* (1) HTF-assisted units must meet the affordability requirements for not less than 30 years, beginning after project completion. The grantee may impose longer periods.

(2) The affordability requirements apply without regard to the term of any loan or mortgage, repayment of the HTF investment, or the transfer of ownership. They must be imposed by deed restrictions, covenants running with the land, use restrictions, or other mechanisms approved by HUD under which the grantee and beneficiaries may require specific performance, except that the affordability restrictions may terminate upon foreclosure or transfer in lieu of foreclosure. The affordability requirements must be recorded in accordance with State recordation laws.

(3) The grantee may use purchase options, rights of first refusal, or other preemptive rights to purchase the housing before foreclosure or deed in lieu of foreclosure in order to preserve affordability.

(4) The affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the foreclosure, or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the project or property.

(5) The termination of the restrictions on the project does not terminate the grantee's repayment obligation under § 92.773.

(e) *Tenant income.* (1) The income of each tenant must be determined initially in accordance with § 92.727(d)(1). In addition, in each year during the period of affordability, the project owner must re-examine each tenant's annual income in accordance with one of the options in § 92.727(c) selected by the grantee.

(2) An owner who re-examines a tenant's annual income through a statement and certification in accordance with § 92.727(d)(2), must examine the source documentation of the income of each tenant every 6th year of the affordability period, except that, for units that receive Federal project-based assistance, the owner must re-examine the tenant's annual income in accordance with the project-based assistance rules. Otherwise, an owner who accepts the tenant's statement and certification in accordance with § 92.727(d)(2) is not required to examine the income of tenants, unless there is evidence that the tenant's written statement failed to completely and accurately state information about the family's size or income.

(f) *Over-income tenants.* HTF-assisted units continue to qualify as affordable housing despite a temporary noncompliance caused by increases in the incomes of existing tenants if actions satisfactory to HUD are being taken to ensure that all vacancies are filled in accordance with this section until the noncompliance is corrected.

(g) *Fixed and floating HTF units.* In a project containing HTF-assisted and other units, the grantee may designate fixed or floating HTF units. This designation must be made at the time of project commitment in the written agreement between the grantee and the recipient, and the HTF units must be identified not later than the time of project completion. Fixed units must remain the same throughout the period of affordability. Floating units must be changed to maintain conformity with the requirements of this section during the period of affordability so that the total number of housing units meeting the requirements of this section remains the same, and each substituted unit must be comparable in terms of size, features, and number of bedrooms to the originally designated HTF-assisted unit.

(h) *Tenant selection.* The tenants must be selected in accordance with § 92.747(d) and must enter into a written lease that complies with § 92.747.

(i) *Nondiscrimination against rental assistance subsidy holders.* The owner cannot refuse to lease HTF-assisted units to a voucher holder under 24 CFR part 982, the Housing Choice Voucher Program, or to the holder of a comparable document evidencing participation in a HOME tenant-based rental assistance program because of the status of the prospective tenant as a holder of such voucher or comparable HOME tenant-based assistance document.

(j) *Onsite inspections and financial oversight. See* § 92.774(d) for the grantee's ongoing responsibilities for onsite inspections and financial oversight.

§ 92.747 Tenant protections and selection.

(a) *Lease.* There must be a written lease between the tenant and the owner of rental housing assisted with HTF funds that is for a period of not less than

one year, unless a shorter period is specified by mutual agreement between the tenant and the owner. Renewal of the tenancy also requires a written lease. The lease must comply with this subpart and with State law. The lease period for transitional housing must equal the tenancy period established by the grantee or the owner in accordance with the definition of "transitional housing."

(b) *Prohibited lease terms.* The lease may not contain any of the following provisions:

(1) *Agreement to be sued.* Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease.

(2) *Treatment of property.* Agreement by the tenant that the owner may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. The owner may dispose of this personal property in accordance with State law.

(3) *Excusing owner from responsibility.* Agreement by the tenant not to hold the owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent.

(4) *Waiver of notice.* Agreement of the tenant that the owner may institute a lawsuit without notice to the tenant.

(5) *Waiver of legal proceedings.* Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties.

(6) *Waiver of a jury trial.* Agreement by the tenant to waive any right to a trial by jury.

(7) *Waiver of right to appeal court decision.* Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge, in court, a court decision in connection with the lease.

(8) *Tenant chargeable with cost of legal actions regardless of outcome.* Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

(9) *Mandatory supportive services.* Agreement by the tenant (other than a tenant in transitional housing) to accept supportive services that are offered.

(c) *Termination of tenancy.* (1) An owner may not terminate the tenancy or refuse to renew the lease of a tenant of rental housing assisted with HTF funds except for serious or repeated violation of the terms and conditions of the lease; violation of applicable Federal, State, or local law; completion of the tenancy period for transitional housing or failure to follow a transitional housing services plan; or other good cause. Good cause does not include an increase in the tenant's income.

(2) To terminate or refuse to renew tenancy, the owner must serve written notice upon the tenant specifying the grounds for the action and providing a specific period for vacating that is consistent with State or local law.

(d) *Tenant selection.* An owner of rental housing assisted with HTF funds must comply with the affirmative marketing requirements established by the grantee pursuant to § 92.760. The owner must adopt and follow written tenant selection policies and criteria that:

(1) Limit the housing to income-eligible families.

(2) Are reasonably related to the applicants' ability to perform the obligations of the lease (*i.e.,* pay the rent, not damage the housing, not interfere with the rights of and quiet enjoyment by other tenants).

(3)(i) Limit eligibility or give a preference to a particular segment of the population if permitted in its written agreement with the grantee (and only if the limitation or preference is described in the grantee's consolidated plan).

(ii) Any limitation or preference cannot violate nondiscrimination requirements of § 92.760. The use of HTF funds for a project that limits eligibility to persons with disabilities or persons with a particular type of disability does not violate nondiscrimination requirements if the housing also receives funding from a Federal program that limits eligibility to a particular segment of the population *(e.g.,* the Housing Opportunity for Persons with AIDS program under 24 CFR part 574, the Shelter Plus Care program under 24 CFR part 582, the Supportive Housing program under 24 CFR part 583, and supportive housing programs for the elderly or persons with disabilities under 24 CFR part 891).

(iii) When a project is limited to persons with disabilities or with a particular type of disability as set forth in paragraph (d)(3)(ii) of this section, the owner may advertise the project as being open only to those who are eligible under the relevant statute and admit only those persons who meet the statutory requirements.

(iv) In the absence of a statute that limits occupancy to persons with disabilities or to persons with a particular type of disability, a project may propose to provide a preference to such persons, if necessary to provide housing, aid, benefits, or services equally as effective as those provided to others, so long as the project is in the most integrated setting appropriate to meet their needs and otherwise complies with 24 CFR 8.4.

(4) Do not reject an applicant with a voucher under the Section 8 Housing Choice Voucher Program (24 CFR part 982) or an applicant with HOME tenant-based rental assistance (24 CFR 92.209) because of the status of the prospective tenant as a recipient of tenant-based rental assistance.

(5) Provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable.

(6) Give prompt written notification to any rejected applicant of the grounds for any rejection.

§ 92.748 Qualification as affordable housing: Homeownership.

(a) *Homeownership activities.* Housing that is for purchase by a first-time homebuyer must meet the affordability requirements of this section.

(b) *Single-family housing.* The housing must be single-family housing, as defined at § 92.2.

(c) *Modest housing.* The housing must be modest housing, in accordance with § 92.749.

(d) *First-time homebuyer and income requirements.* The housing must be acquired by a first-time homebuyer whose family qualifies as an income-eligible family and the housing must be the principal residence of the family throughout the period described in paragraph (e) of this section. In determining the income eligibility of the family, the grantee must include the income of all persons living in the housing. Before purchasing the housing, the family must have completed a program of independent financial education and homeownership counseling from an eligible organization that meets the requirements of section 1132 of the Federal Housing Finance Regulatory Reform Act of 2008 (12 U.S.C. 1701x note).

(e) *Period of affordability.* (1) The HTF-assisted housing must meet the affordability requirements for not less than 30 years.

(f) *Resale during period of affordability.* (1) To ensure continuing affordability, the grantee may apply its HOME program resale restrictions to the

HTF-assisted units or the grantee may develop and adopt resale restrictions for the HTF program. The HTF resale provisions must be included in the State's consolidated plan. If a grantee uses resale provisions established for the HOME program, it must amend those provisions to accommodate subsequent purchasers who are income-eligible families.

(2) The resale requirements must ensure, if the housing does not continue to be the principal residence of the family for the duration of the period of affordability, that:

(i) The housing is made available for subsequent purchase only to a first-time homebuyer whose family qualifies as an income-eligible family and will use the property as its principal residence; and

(ii) The price at resale provides the original HTF-assisted owner a fair return on investment (including the homeowner's investment and any capital improvement), and ensures that the housing will remain affordable to a reasonable range of income-eligible homebuyers. The grantee must specifically define "fair return on investment" and "affordability to a reasonable range of income-eligible homebuyers."

(3)(i) The mechanism to impose the resale provisions must be deed restrictions, covenants running with the land, use restrictions, or other mechanisms approved by HUD under which the grantee and beneficiaries may require specific performance.

(ii) The affordability restrictions may terminate upon foreclosure, transfer in lieu of foreclosure, or assignment of a mortgage insured by the Federal Housing Administration to HUD.

(iii) The grantee may use purchase options, rights of first refusal, or other preemptive rights to purchase the housing before foreclosure to preserve affordability. The affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the termination event obtains an ownership interest in the housing.

(g) *Special considerations for single-family properties with more than one unit.* (1) If the HTF funds are used only to assist an income-eligible homebuyer in acquiring one unit in a single-family property containing more than one unit and the assisted unit will be the principal residence of the homebuyer, the affordability requirements of this section apply only to the assisted unit.

(2) If HTF funds are also used to assist the income-eligible homebuyer in acquiring one or more of the rental units in the single-family property, the affordability requirements of § 92.746 apply to assisted rental units, except that the grantee must impose resale restrictions on all assisted units (owner-occupied and rental units) in the single-family housing. The affordability requirements on all assisted units continue for the period of affordability. If HTF funds are used to assist only the rental units in such a property, then the requirements of § 92.746 would apply and the owner-occupied unit would not be subject to the income targeting or affordability provisions of this section.

(h) *Lease-purchase.* (1) HTF funds may be used to assist homebuyers through lease-purchase programs for existing housing and for housing to be constructed. The housing must be purchased by an eligible homebuyer within 36 months of signing the lease-purchase agreement. The homebuyer must qualify as an income-eligible family at the time the lease-purchase agreement is signed.

(2) If HTF funds are used to acquire housing that will be resold to a homebuyer through a lease-purchase program, the HTF affordability requirements for rental housing in § 92.746 shall apply if the housing is not transferred to an eligible homebuyer within 42 months after project completion.

(i) *Contract to purchase.* If HTF funds are used to assist a homebuyer who has entered into a contract to purchase housing to be constructed, the homebuyer must qualify as an income-eligible family at the time the contract is signed.

(j) *Preserving affordability.* (1) To preserve the affordability of housing that was previously assisted with HTF funds and subject to the requirements of this section, a grantee may use additional HTF funds to acquire the housing through a purchase option, right of first refusal, or other preemptive right before foreclosure, or to acquire the housing at the foreclosure sale, undertake any necessary rehabilitation, and provide assistance to another first-time homebuyer. The housing must be sold to a new eligible homebuyer in accordance with the requirements of this section. Additional HTF funds may not be used if the mortgage in default was funded with HTF funds.

(2) The total amount of original and additional HTF assistance may not exceed the maximum per-unit subsidy amount established pursuant to § 92.740. As an alternative to charging the cost to the HTF program under § 92.731, the grantee may charge the cost to the HTF program under § 92.732 as a reasonable administrative cost of its HTF program, so that the additional HTF funds for the housing are not subject to the maximum per-unit subsidy amount.

(k) *Agreements with lending institutions.* (1) The grantee may provide homeownership assistance through written agreements with for-profit or nonprofit lending institutions that are providing the first mortgage loan to a family. The grantee must independently verify that the family is income-eligible and meets the definition of "first-time homebuyer," and must inspect the housing for compliance with the applicable property standards.

(2) No fees may be charged to the family for the HTF homeownership assistance *(e.g.,* origination fees or points, processing fees, inspection fees), although reasonable administrative costs can be charged to the HTF program as project costs *(e.g.,* nominal application fees, credit report fees, and appraisal fees). The grantee must determine that the fees and other amounts charged to the family by the lender for the first mortgage financing are reasonable. If the grantee requires lenders to pay a fee to participate in the HTF program, the fee is program income to the HTF program.

(l) *Written policies.* The grantee must have and follow written policies for:

(1) Underwriting standards for homeownership assistance that examine the family's housing debt, overall debt, income, and ability to maintain the housing;

(2) Anti-predatory lending; and

(3) Refinancing loans to which HTF loans are subordinated to ensure that the terms of the new loan are reasonable.

§ 92.749 Qualification as affordable housing: Modest housing requirements for homeownership.

(a) *General.* Housing that is for acquisition by a family pursuant to § 92.748 must be modest housing in accordance with this section.

(b) *New construction.* In the case of acquisition of newly constructed housing or standard housing, the housing must have an appraised value that does not exceed 95 percent of the median purchase price for the type of single-family housing for the area, as described in paragraphs (d) and (e) of this section.

(c) *Rehabilitation.* In the case of acquisition with rehabilitation, the housing must have an estimated value after rehabilitation that does not exceed 95 percent of the median purchase price for the area, as described in paragraphs (d) and (e) of this section.

(d) *Options for determining purchase price limits.* If a grantee intends to use

HTF funds for homebuyer assistance, the grantee must either:

(1) Use the limits issued by HUD for the HTF program (*i.e.,* 95 percent of the median purchase price for the area); or

(2) Determine 95 percent of the area median purchase price for single-family housing in the jurisdiction, in accordance with paragraph (e) of this section.

(e) *Determining 95 percent of area median purchase price.* A grantee that elects to determine the purchase price limit under paragraph (d)(2) of this section must use the following methodology:

(1) The grantee must establish the price for different types of single-family housing for different areas within its jurisdiction. The 95 percent of area median purchase price must be established in accordance with a market analysis that ensures that a sufficient number of recent housing sales are included in the survey.

(2) Sales must cover the requisite number of months based on volume:

(i) For 500 or more sales per month, a one-month reporting period;

(ii) For 250 through 499 sales per month, a 2-month reporting period; and

(iii) For less than 250 sales per month, at least a 3-month reporting period.

(3) The data must be listed in ascending order of sales price. The address of the listed properties must include the location within the jurisdiction. Lot, square, and subdivision data may be substituted for the street address. The housing sales data must reflect all, or nearly all, of the one-family house sales in the entire jurisdiction.

(4) To determine the median, the grantee must:

(i) Use the middle sale on the list if an odd number of sales; or

(ii) Use the higher of the middle numbers if an even number of sales.

(5) After identifying the median sales price, the amount must be multiplied by 0.95 to determine the 95 percent of the area median purchase price. This information must be updated annually and submitted to the relevant HUD Field Office for review.

§ 92.750 Faith-based organizations.

Faith-based organizations are eligible to participate in the HTF, as provided in 24 CFR 92.257.

Other Federal Requirements

§ 92.760 Other Federal requirements and nondiscrimination; affirmative marketing.

(a) The Federal requirements set forth in 24 CFR part 5, subpart A, are applicable to the HTF program.

(b) The affirmative marketing requirements contained in 24 CFR 92.351(a) apply to the HTF program.

§ 92.761 Lead-based paint.

Housing assisted with HTF funds is subject to the regulations at 24 CFR part 35, subparts A, B, J, K, and R.

§ 92.762 Displacement, relocation, and acquisition.

The displacement, relocation, and acquisition requirements of 24 CFR 92.353 apply to the HTF program.

§ 92.763 Conflict of interest.

The conflict-of-interest requirements contained in § 92.356 apply to the HTF program.

§ 92.764 Funding accountability and transparency.

The HTF grant to the grantee and all assistance provided to subgrantees and recipients shall be considered a Federal award for purposes of the Federal Funding Accountability and Transparency Act of 2006 (31 U.S.C. 6101 note).

Program Administration

§ 92.770 Housing Trust Fund (HTF) accounts.

(a) *General.* The HTF consists of the accounts described in this section solely for use in accordance with the provisions of this subpart. HUD will establish an HTF United States Treasury account (HTF Treasury account) for each grantee. Each grantee may use either a separate HTF local account or a subsidiary account within its general fund (or other appropriate fund) as the HTF local account.

(b) *HTF Treasury account.* The HTF Treasury account includes the annual grant and funds reallocated to the State by formula.

(c) *HTF local account.* (1) The HTF local account includes deposits of HTF funds disbursed from the HTF Treasury account, any program income, and any repayments as required by § 92.773.

(2) The HTF local account must be interest-bearing.

(d) *Reductions.* (1) HUD will reduce or recapture funds in the HTF account by the amount of:

(i) Any funds in the HTF Treasury account that are not committed within 24 months after the last day of the month in which HUD notifies the State of HUD's execution of the HTF Grant Agreement;

(ii) Any funds in the HTF local account that are not expended within 5 years after the last day of the month in which HUD notifies the State of HUD's execution of the HTF Grant Agreement;

(iii) Any amounts pursuant to § 92.783; and

(iv) Amounts that the grantee fails to obtain and that were required to be reimbursed or returned under § 92.780.

(2) For purposes of determining the amount by which the HTF account will be reduced or recaptured under paragraphs (d)(1)(i) and (ii) of this section, HUD will consider the sum of commitments or expenditures, as applicable, from the fiscal year grant being examined, as well as from previous and subsequent grants. The sum must be greater than the amount of the fiscal year grant being examined and all previous grants.

§ 92.771 HTF Grant Agreement.

Allocated and reallocated funds will be made available pursuant to an HTF Grant Agreement.

§ 92.772 Program disbursement and information system.

(a) *General.* The HTF Treasury account is managed through a computerized disbursement and information system established by HUD. The system disburses HTF funds that are allocated or reallocated, and collects and reports information on the use of funds in the HTF Treasury account. The grantee must report on the receipt and use of all program income in HUD's computerized disbursement and information system. The grantee must develop and maintain a system to ensure that each recipient and subgrantee uses HTF funds in accordance with the requirements of this subpart and that any requirements or conditions under which the HTF funds were provided.

(b) *Project set-up.* (1) After the grantee executes the HTF Grant Agreement, submits the applicable banking and security documents, and commits funds to a specific local project, the grantee shall identify (set up) specific activities (*i.e.,* projects) in the disbursement and information system. Investments that require the set-up of projects in the system are the acquisition, new construction, or rehabilitation of housing, and operating cost assistance. The grantee is required to enter complete project set-up information at the time of project set-up.

(2) If the project set-up information is not completed within 20 days of the initial project set-up, the project may be canceled by the system. In addition, a project that has been committed in the system for 12 months without an initial disbursement of funds may be canceled by the system.

(c) *Disbursement of HTF Funds.* (1) After complete project set-up

information is entered into the disbursement and information system, HTF funds for the project may be drawn down from the HTF Treasury account by the grantee by electronic funds transfer. The funds will be deposited in the HTF local account of the grantee within 72 hours of the disbursement request. Any drawdown of funds in the HTF Treasury account is conditioned upon the provision of satisfactory information by the grantee about the project and compliance with other procedures, as specified by HUD.

(2) Funds drawn from the HTF Treasury account are subject to the Intergovernmental Cooperation Act (31 U.S.C. 6501 *et seq.*) and regulations at 31 CFR part 205.

(3) Funds in the HTF local account must be disbursed before requests are made for funds in the HTF Treasury account.

(4) The grantee will be paid on an advance basis, provided it complies with the requirements of this subpart.

(d) *Project completion.* (1) Complete project completion information must be entered into the disbursement and information system, or otherwise provided, within 120 days of the final project drawdown. If satisfactory project completion information is not provided, HUD may suspend further project set-ups or take other corrective actions.

(2) Additional HTF funds for development-related costs may be committed to a project up to one year after project completion, but the amount of HTF funds in the project may not exceed the maximum per-unit development subsidy amount established pursuant to § 92.740.

(e) *Access by other participants.* Access to the disbursement and information system by other entities participating in the HTF program will be governed by procedures established by HUD.

§ 92.773 Program income and repayments.

(a) *Program income.* Program income must be treated as HTF funds and must be used in accordance with the requirements of this subpart. Program income must be deposited in the grantee's HTF local account unless the grantee permits a subgrantee to retain the program income for additional HTF projects pursuant to the written agreement required by § 92.774. The grantee must report the program income received as well as the use of the program income in the disbursement and information system that HUD designates for the HTF.

(b) *Repayments.* (1) Any HTF funds invested in housing that does not meet the affordability requirements for the period specified in § 92.746 or § 92.748, as applicable, must be repaid by the grantee in accordance with paragraph (b)(3) of this section.

(2) Any HTF funds invested in a project that is terminated before completion, either voluntarily or otherwise, must be repaid by the grantee, in accordance with paragraph (b)(3) of this section.

(3) HUD will instruct the grantee to either repay the funds to the HTF Treasury account or the local account. Generally, if the HTF funds were disbursed from the grantee's HTF Treasury account, they must be repaid to the HTF Treasury account. If the HTF funds were disbursed from the grantee's HTF local account, they must be repaid to the local account.

(4) If the grantee is no longer a grantee in the HTF program when the repayment is made, the funds must be remitted to HUD and reallocated in accordance with § 92.714 of this subpart.

§ 92.774 Grantee responsibilities; written agreements; onsite inspections; financial oversight.

(a) *Responsibilities.* The grantee is responsible for managing the day-to-day operations of its HTF program, ensuring that HTF funds are used in accordance with all program requirements and written agreements, and taking appropriate action when performance problems arise. The use of subgrantees or contractors does not relieve the grantee of this responsibility, and procurement contracts shall be governed by 24 CFR 85.36 and 84.44. The performance of subgrantees and contractors of the grantee must be reviewed at least annually. The grantee must have and follow written policies, procedures, and systems, including a system for assessing risk of activities and projects, and a system for monitoring entities consistent with this section, to ensure that the requirements of this subpart are met.

(b) *Executing a written agreement.* Before disbursing any HTF funds to any entity, the grantee must enter into a written agreement with that entity. The written agreement must ensure compliance with the requirements of this subpart. Where HOME program funds are used together with HTF funds, a single written agreement meeting the requirements of both § 92.504 and this subpart may be used to enforce requirements for both programs.

(c) *Provisions in written agreements.* The contents of the agreement may vary depending upon the role the entity is asked to assume or the type of project undertaken. This section details basic requirements by role and the minimum provisions that must be included in a written agreement.

(1) *Subgrantee.* The agreement must require the subgrantee to comply with the requirements applicable to the grantee under this subpart. The agreement between the grantee and the subgrantee must include:

(i) *Use of the HTF funds.* The HTF subgrantee must have a consolidated plan under 24 CFR part 91, and the written agreement must require that an HTF allocation plan be part of the subgrantee's consolidated plan *(see* 24 CFR 91.220(l)(4)). The written agreement must require that the selection of projects by eligible recipients will be in accordance with the HTF allocation plan. The agreement must describe the tasks to be performed, a schedule for completing the tasks (including a schedule for committing funds to projects), a budget, and the period of the agreement. These items must be in sufficient detail to provide a sound basis for the grantee to effectively monitor performance under the agreement.

(ii) *Deadlines.* The agreement must state the time requirements for the commitment and expenditure of HTF funds and specify that remaining funds will be reduced or recaptured by HUD, as provided in § 92.770.

(iii) *Audit.* The agreement must state that an audit of the subgrantee must be conducted at least annually, in accordance with § 92.776.

(iv) *Program income.* The agreement must state if program income is to be remitted to the grantee or to be retained by the subgrantee for additional eligible activities.

(v) *Uniform administrative requirements.* The agreement must require the subgrantee to comply with applicable uniform administrative requirements, as described in § 92.775.

(vi) *Other program requirements.* The agreement must require the subgrantee to carry out each project in compliance with all Federal laws and regulations described in §§ 92.760–92.764 of this subpart.

(vii) *Affirmative marketing.* The agreement must specify the subgrantee's affirmative marketing responsibilities, in accordance with § 92.760.

(viii) *Requests for disbursement of funds.* The agreement must specify that the subgrantee may not request disbursement of funds under the agreement until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed. Program income must be disbursed before the subgrantee requests funds from the grantee.

(ix) *Reversion of assets.* The agreement must specify that upon expiration of the agreement, the subgrantee must transfer to the grantee any HTF funds on hand at the time of expiration and any accounts receivable attributable to the use of HTF funds.

(x) *Records and reports.* The agreement must specify the particular records that must be maintained and the information or reports that must be submitted in order to assist the grantee in meeting its recordkeeping and reporting requirements.

(xi) *Enforcement of the agreement.* The agreement must specify remedies for breach of the provisions of the agreement. The agreement must specify that, in accordance with 24 CFR 84.62 or 85.43, suspension or termination may occur if the subgrantee materially fails to comply with any term of the agreement. The grantee may permit the agreement to be terminated for convenience, in accordance with 24 CFR 84.61 or 85.44.

(xii) *Written agreement.* The agreement must require that before the subgrantee provides HTF funds to eligible recipients, first-time homebuyers, or contractors, the subgrantee must have a written agreement that meets the requirements of this section.

(xiii) *Duration of the agreement.* The agreement must specify the duration of the agreement.

(xiv) *Fees.* The agreement must prohibit the subgrantee from charging servicing, origination, or other fees for the costs of administering the HTF program.

(2) *Eligible recipient.* The agreement between the grantee and the eligible recipient selected for funding must include:

(i) *Use of the HTF funds.* The agreement must describe the use of the HTF funds for the project, including the tasks to be performed, a schedule for completing the tasks and project (including the expenditure deadline), and a project budget. These items must be in sufficient detail to provide a sound basis for the grantee to effectively monitor performance under the agreement. If the grantee is providing operating cost assistance, the written agreement must include the provisions required by § 92.731(c).

(ii) *Deadlines.* The agreement must state the time requirements for the commitment and expenditure of HTF funds and specify that remaining funds will be reduced or recaptured by HUD, as provided in § 92.770.

(iii) *Audit.* The agreement must specify that the recipient will submit to the grantee a cost certification performed by a certified public accountant for each project assisted with HTF funds. The agreement must specify that the recipient will submit to the grantee an annual audit performed on each project assisted with HTF funds, beginning the first year following the cost certification and with the final annual audit occurring the last year of the affordability period.

(iv) *Affordability.* The agreement must specify the affordability period, require housing assisted with HTF funds to meet the affordability requirements of § 92.746 or § 92.748, as applicable, and must require repayment of the funds if the housing does not meet the affordability requirements for the specified time period. If the recipient is undertaking a rental project, the agreement must establish the initial rents and the procedures for rent increases, the number of HTF units, the size of the HTF units, the designation of the HTF units as fixed or floating, and the requirement to provide the address (*e.g.,* street address and apartment number) of each HTF unit no later than the time of project completion. If the recipient is undertaking homeownership projects for sale to first-time homebuyers, in accordance with § 92.748, the agreement must establish the resale requirements that must be imposed on the housing, the sales price or the basis upon which the sales price will be determined, and the disposition of the sales proceeds.

(v) *Project requirements.* The agreement must require the housing to meet the property standards in §§ 92.741–92.745 of this subpart, as applicable, and in accordance with the type of project assisted upon project completion. The agreement must also require owners of rental housing assisted with HTF funds to maintain the housing in compliance with § 92.745 of this part for the duration of the affordability period, and to comply with the requirements of § 92.747. The agreement may permit the recipient to limit eligibility or give a preference to a particular segment of the population, only if the grantee has described any such limited eligibility or preference in its consolidated plan; provided, however, that any limitation or preference cannot violate nondiscrimination requirements in § 92.760.

(vi) *Other program requirements.* The agreement must require the eligible recipient to carry out each project in compliance with all Federal laws and regulations described in §§ 92.760–92.764 of this subpart.

(vii) *Affirmative marketing.* The agreement must specify the recipient's affirmative marketing responsibilities, as enumerated by the grantee in accordance with § 92.760.

(viii) *Requests for disbursement of funds.* The agreement must specify that the recipient may not request disbursement of funds under the agreement until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed.

(ix) *Records and reports.* The agreement must specify the particular records that must be maintained and the information or reports that must be submitted in order to assist the grantee in meeting its recordkeeping and reporting requirements. The owner of rental housing must annually provide the grantee with information on rents and occupancy of HTF-assisted units to demonstrate compliance with § 92.746. If the rental housing project has floating HTF units, the owner must provide the grantee with information regarding unit substitution and filling vacancies so that the project remains in compliance with HTF rental occupancy requirements. The agreement must specify the reporting requirements (including copies of financial statements) to enable the grantee to determine the financial condition (and continued financial viability) of the rental project.

(x) *Enforcement of the agreement.* The agreement must provide for a means of enforcement of the affordable housing requirements by the grantee and the intended beneficiaries. This means of enforcement and the affordability requirements in § 92.746 must be imposed by deed restrictions, covenants running with the land, use restrictions, or other mechanisms approved by HUD under which the grantee and beneficiaries may require specific performance. In addition, the agreement must specify remedies for breach of the provisions of the agreement.

(xi) *Duration of the agreement.* The agreement must specify the duration of the agreement. If the housing assisted under this agreement is rental housing, the agreement must be in effect through the affordability period required by the grantee under § 92.746. If the housing assisted under this agreement is homeownership housing, the agreement must be in effect at least until completion of the project and ownership by the first-time homebuyer.

(xii) *Fees.* The agreement must prohibit project owners from charging origination fees, parking fees, laundry room access fees, and other fees; however, rental project owners may charge reasonable application fees to prospective tenants.

(3) *First-time homebuyer.* When a grantee provides assistance to a homebuyer, the written agreement must include as a minimum:

(i) *Use of the HTF funds.* The agreement must conform to the requirements in § 92.748, including the limitations on the value of the property, principal residence requirement, lease-purchase terms, if applicable, and the resale provisions. The agreement must specify the amount of HTF funds, the form of assistance (*e.g.,* grant, amortizing loan, deferred payment loan), the use of the funds (*e.g.,* downpayment, closing costs), and the time by which the housing must be acquired.

(ii) *Resale restrictions.* The agreement must specify the resale restrictions established under § 92.748 for the specified time period.

(iii) *Enforcement of the agreement.* The agreement must provide for a means of enforcement of the affordable housing requirements by the grantee. This means of enforcement and the affordability requirements in § 92.748 must be imposed by deed restrictions, covenants running with the land, use restrictions, or other mechanisms approved by HUD under which the grantee and beneficiaries may require specific performance. In addition, the agreement must specify remedies for breach of the provisions of the agreement.

(d) *Onsite inspections.* (1) *Project completion.* The grantee must perform an onsite inspection of each HTF-assisted project at project completion to determine that the housing meets the property standards of §§ 92.741 through 92.744. The inspections must be in accordance with the inspection procedures that the grantee establishes to meet the inspection requirements of §§ 92.741 through 92.744.

(2) *Period of affordability.* (i) During the period of affordability, the grantee must perform onsite inspections of HTF-assisted rental housing buildings to determine compliance with the ongoing property standards of § 92.745 and to verify the information submitted by the owners in accordance with the requirements of § 92.746. The inspections must be in accordance with the inspection procedures that the grantee establishes to meet the inspection requirements of § 92.745.

(ii) The onsite inspections must occur 12 months after project completion and at least once every 3 years thereafter during the period of affordability.

(iii) If there are observed deficiencies for any of the inspectable items established by the grantee, in accordance with the inspection requirements of § 92.745, a follow-up onsite inspection must occur within 12 months, or within a reasonable time frame established by the grantee depending on the severity of the deficiency, to verify that all observed deficiencies have been corrected. Life-threatening health and safety deficiencies must be corrected immediately, in accordance with § 92.745(a)(2).

(iv) The property owner must annually certify to the grantee that each building in the project is suitable for occupancy, taking into account State and local health, safety, and other applicable codes, ordinances, and requirements, and the ongoing property standards established by the grantee to meet the requirements of § 92.745.

(v) Inspections must be based on a sufficient sample of units. The grantee must select the sample. For projects with one to four HTF-assisted units, the inspectable items (site, building exterior, building systems, and common areas) for each building with HTF-assisted units and 100 percent of the HTF-assisted dwelling units must be inspected. For projects with more than four HTF-assisted units, the inspectable items (site, building exterior, building systems, and common areas) for each building with HTF-assisted units and at least 20 percent of the HTF-assisted dwelling units in each building, but not less than four HTF-assisted units in each project and one HTF-assisted unit in each building, must be inspected.

(e) *Financial oversight.* During the period of affordability, the grantee must examine regularly (at least annually) the financial condition of HTF-assisted rental housing to determine the continued financial viability of the housing and must take actions to correct problems.

§ 92.775 Applicability of uniform administrative requirements.

The uniform administrative requirements contained in § 92.505 apply to the HTF.

§ 92.776 Audit.

(a) Audits of the grantee and subgrantees must be conducted in accordance with 24 CFR 84.26 and 85.26. The use of HTF grant funds by the grantee must be audited not less than annually to ensure compliance with this subpart. Any financial statement submitted by the grantee to HUD must be reviewed by an independent certified public accountant, in accordance with Statements on Standards for Accounting and Review Services, which is issued by the American Institute of Certified Public Accountants.

(b) The agreement must specify that the recipient will submit to the grantee a cost certification performed by a certified public accountant for each project assisted with HTF funds. The agreement must specify that the recipient will submit to the grantee an annual audit performed on each project assisted with HTF funds, beginning the first year following the cost certification and with the final annual audit occurring the last year of the affordability period.

§ 92.777 Closeout.

HTF funds will be closed out in accordance with procedures established by HUD.

§ 92.778 Recordkeeping.

(a) *General.* Each grantee must establish and maintain sufficient records to enable HUD to determine whether the grantee has met the requirements of this subpart. At a minimum, the following records are needed:

(1) *Program records.* (i) The forms of HTF assistance used in the program.

(ii) The subsidy layering guidelines adopted in accordance with § 92.740.

(iii) If HTF funds are used for housing for first-time homebuyers, the procedures used for establishing 95 percent of the median purchase price for the area in accordance with § 92.749, as set forth in the Consolidated Plan.

(iv) If HTF funds are used for acquisition of housing for homeownership, the resale guidelines established in accordance with § 92.748, as set forth in the Consolidated Plan.

(v) Records documenting compliance with the 24-month commitment deadline of § 92.770(d)(i).

(vi) Records documenting compliance with the 10 percent limitation on administrative and planning costs in, accordance with § 92.732.

(2) *Project records.* (i) A full description of each project assisted with HTF funds, including the location (address of each unit), form of HTF assistance, and the units assisted with HTF funds.

(ii) The source and application of funds for each project, including supporting documentation, in accordance with 24 CFR 85.20, and records to document the eligibility and allowability of the project costs, including the documentation of the actual HTF-eligible development costs of each HTF-assisted unit (through allocation of costs, if permissible under § 92.730(c)) in situations where HTF funds are used to assist less than all of the units in a multi-unit project.

(iii) Records demonstrating that each rental housing or homeownership project meets the maximum per-unit subsidy amount established pursuant to § 92.740(a), and the subsidy layering and underwriting evaluation in accordance with § 92.740(b).

(iv) Records (*e.g.,* inspection reports) demonstrating that each project meets the property standards of §§ 92.740–92.745 of this part at project completion. In addition, during the period of affordability, records for rental projects demonstrating compliance with the property standards, and financial reviews and actions pursuant to § 92.774(a).

(v) Records demonstrating that each family is income-eligible.

(vi) Records demonstrating that each rental housing project meets the affordability and income targeting requirements of § 92.746 for the required period. Records must be kept for each family assisted.

(vii) Records demonstrating that each lease for an assisted rental housing unit complies with the tenant and participant protections of § 92.747. Records must be kept for each family assisted.

(viii) Records demonstrating that the purchase price or estimated value after rehabilitation for each housing unit for a first-time homebuyer does not exceed 95 percent of the median purchase price for the area, in accordance with § 92.749. The records must demonstrate how the estimated value was determined.

(ix) Records demonstrating that each housing unit for a first-time homebuyer meets the affordability requirements of § 92.748 for the required period.

(x) Records demonstrating that a site and neighborhood standards review was conducted for each project that included new construction of rental housing assisted under this subpart, to determine that the site meets the requirements of § 92.726.

(xi) Records (written agreements) demonstrating compliance with the written agreements requirements in § 92.774.

(3) *Financial records.* (i) Records identifying the source and application of funds for each fiscal year, including the annual grant and any reallocation (identified by Federal fiscal year).

(ii) Records concerning the HTF Treasury account and local account required to be established and maintained by § 92.770, including deposits, disbursements, balances, supporting documentation, and any other information required by the program disbursement and information system established by HUD.

(iii) Records identifying the source and application of program income and repayments.

(iv) Records demonstrating adequate budget control, in accordance with 24 CFR 85.20, including evidence of periodic account reconciliations.

(4) *Program administration records.* (i) Written policies, procedures, and systems, including a system for assessing risk of activities and projects, and a system for monitoring entities consistent with this section, to ensure that the requirements of this subpart are met.

(ii) Records demonstrating compliance with the applicable uniform administrative requirements required by § 92.775.

(iii) Records documenting required inspections, monitoring reviews and audits, and the resolution of any findings or concerns.

(5) *Records concerning other Federal requirements.* (i) Equal opportunity and fair housing records, as required under 24 CFR part 121.

(A) Data on the extent to which each racial and ethnic group and single-headed households (by gender of household head) have applied for, participated in, or benefited from, any program or activity funded in whole or in part with HTF funds.

(B) Documentation of actions undertaken to meet the requirements of 24 CFR part 135, which implements section 3 of the Housing Development Act of 1968, as amended (12 U.S.C. 1701u).

(ii) Records demonstrating compliance with the affirmative marketing procedures and requirements of § 92.760.

(iii) Records demonstrating compliance with the lead-based paint requirements of 24 part 35, subparts A, B, J, K, M, and R.

(iv) Records demonstrating compliance with requirements of § 92.762 regarding displacement, relocation, and real property acquisition.

(v) Records supporting exceptions to the conflict-of-interest prohibition pursuant to § 92.763.

(vi) Debarment and suspension certifications required by 24 CFR parts 24 and 91.

(vii) Records demonstrating compliance with § 92.764.

(viii) Records demonstrating compliance with § 85.36(e) regarding the grantee's activities related to minority business enterprise (MBE) and women's business enterprise (WBE).

(b) *Period of record retention.* All records pertaining to each fiscal year of HTF funds must be retained in a secure location for the most recent 5-year period, except as provided below.

(1) For rental housing projects, records may be retained for 5 years after the project completion date, except that records of individual tenant income verifications, project rents, and project inspections must be retained for the most recent 5-year period, until 5 years after the affordability period terminates.

(2) For homeownership housing projects, records may be retained for 5 years after the project completion date, except for documents imposing resale restrictions that must be retained for 5 years after the affordability period terminates.

(3) Written agreements must be retained for 5 years after the agreement terminates.

(4) Records covering displacements and acquisitions must be retained for 5 years after the date by which all persons displaced from the property and all persons whose property is acquired for the project have received the final payment to which they are entitled, in accordance with § 92.762.

(5) If any litigation, claim, negotiation, audit, monitoring, inspection, or other action has been started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues that arise from it, or until the end of the required period, whichever is later.

(c) *Access to records.* (1) The grantee must provide citizens, public agencies, and other interested parties with reasonable access to records, consistent with applicable State and local laws regarding privacy and obligations of confidentiality.

(2) HUD and the Comptroller General of the United States, and any of their representatives, have the right of access to any pertinent books, documents, papers, or other records of the grantee, subgrantees, and recipients, in order to make audits, examinations, excerpts, and transcripts.

§ 92.779 Performance reports.

Each grantee must develop and maintain a system to track the use of its HTF funds, and submit annual performance and management reports on its HTF program in such format and at such time as HUD may prescribe. These reports must describe the program's accomplishments, and the extent to which the grantee complied with its approved allocation plan and the requirements of this subpart. HUD will make the performance and management reports publicly available.

Performance Reviews and Sanctions

§ 92.780 Accountability of recipients.

The grantee shall review each recipient to determine compliance with the requirements of this subpart and the terms of the written agreement in accordance with the grantee's policies, procedures, and systems established pursuant to § 92.774(a).

(a) *Misuse of funds.* (1) *Reimbursement requirement.* If a recipient of HTF assistance is determined to have used HTF funds in a manner that is materially in violation of the requirements of this subpart or any requirements or conditions under which the funds were provided, the grantee must require that, within 12 months after the determination of such misuse, the recipient reimburse the grantee for such misused amounts and return to the grantee any such amounts that remain unused or uncommitted for use. The reimbursement is in addition to any other remedies that may be available under law.

(2) *Determination.* The grantee or HUD may make the determination, provided that:

(i) The grantee provides notification and opportunity for discretionary review to HUD; and

(ii) HUD does not subsequently reverse the determination.

(b) *Reduction for failure to obtain return of misused funds.* (1) If, in any year, a grantee fails to obtain reimbursement or return of the full amount required to be reimbursed or returned to the grantee during the year, the amount of the grant for the grantee for the succeeding year will be reduced by the amount by which the amounts required to be reimbursed or returned exceed the amount actually reimbursed or returned.

(2) In any case in which a failure to obtain reimbursement or return occurs during a year immediately preceding a year in which HTF grants will not be made, the grantee shall pay to HUD, for reallocation among the other grantees, an amount equal to the amount of the reduction for the entity that would otherwise apply.

§ 92.781 Performance reviews.

(a) *General.* HUD will review the performance of each grantee in carrying out its responsibilities under this subpart whenever determined necessary by HUD, but at least annually. In conducting performance reviews, HUD will rely primarily on information obtained from the grantee's records and reports, findings from onsite monitoring, audit reports, and information generated from the disbursement and information system established by HUD. Where applicable, HUD may also consider relevant information pertaining to a grantee's performance gained from other sources, including citizen comments, complaint determinations, and litigation. Reviews to determine compliance with specific requirements of this subpart will be conducted as necessary, with or without prior notice to the grantee. Onsite comprehensive performance reviews under the standards in paragraph (b) of this section will be conducted after prior notice to the grantee.

(b) *Standards for comprehensive performance review.* A grantee's performance will be comprehensively reviewed periodically, as prescribed by HUD, to determine whether the grantee has committed and expended the HTF funds as required by § 92.770; has met the requirements of this subpart, particularly eligible activities, income targeting, affordability, and property standards; has awarded the funds in accordance with its HTF plan and requirements of this subpart; has reviewed its subgrantees and recipients to determine whether they have satisfied the requirements of this subpart and the terms of their written agreements; and has met its performance measures in its consolidated plan.

§ 92.782 Corrective and remedial actions.

The corrective and remedial actions contained in § 92.551 apply to the HTF, except paragraph (c)(1)(viii).

§ 92.783 Notice and opportunity for hearing; sanctions.

(a) If HUD finds after reasonable notice and opportunity for hearing that a grantee has substantially failed to comply with any provision of this subpart, and until HUD is satisfied that there is no longer any such failure to comply:

(1) HUD shall reduce the funds in the grantee's HTF account by the amount of any expenditures that were not in accordance with the requirements of this subpart or require the grantee to repay to HUD any amount of the HTF grant that was not used in accordance with the requirements of this subpart; and

(2) HUD may do one or more of the following:

(i) Prevent withdrawals from the grantee's HTF account for activities affected by the failure to comply;

(ii) Restrict the grantee's activities under this subpart to activities or recipients not affected by the failure to comply;

(iii) Remove the State from participation in allocations or reallocations of funds made available under §§ 92.710 through 92.714 of this part; or

(iv) Terminate any HTF assistance to the grantee. HUD may, on due notice, suspend payments at any time after the issuance of a notice of opportunity for hearing pursuant to paragraph (b)(1) of this section, pending such hearing and a final decision, to the extent that HUD determines such action to be necessary to preclude the further expenditure of funds for activities affected by the failure to comply.

(b) *Proceedings.* When HUD proposes to take action pursuant to this section, the respondent in the proceedings will be the grantee. Proceedings will be conducted in accordance with 24 CFR part 26.

Dated: September 28, 2010.

Shaun Donovan,

Secretary.

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